

# METROPOLITAN AREA PLANNING COMMISSION

## MINUTES

**May 17, 2012**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, May 17, 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; David Foster; Bill Johnson; Don Klausmeyer; Morrie Sheets; Don Sherman; George Sherman (In @ 1:35 p.m.) and Chuck Warren. Ron Marnell; John W. McKay, Jr.; Debra Miller Stevens; M.S. Mitchell and were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jess McNeely, 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 May 3, 2012 Planning Commission minutes.

**MOTION:** To approve the May 3, 2012 meeting minutes, as amended.

**DENNIS** moved, **WARREN** seconded the motion, and it carried (9-0).

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2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2012-00008: One-Step Final Plat - BATC Estates Addition**, located south of Central, east of West Street.

NOTE: This is a replat of a portion of the Knight Acres Addition. The site has been approved for a zone change (ZON 2011-00045) from SF-5 Single-family Residential to TF-3 Two-family Residential subject to platting.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve the site.
- 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.
- D. The lots should be denoted by bold lines.
- E. The Applicant has platted a 20-foot building setback along West St. Louis Avenue for Lots 1 and 2, and a 20-foot building setback along North Joann Street for Lot 3 which represents an adjustment of the Zoning Code standards which requires a 25-foot front yard setback for the TF-3 district. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.

- F. The platlor'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.
- G. 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.)
- H. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- I. 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.
- J. 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.
- K. 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.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. 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, **JOHNSON** seconded the motion, and it carried (9-0).

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G. **SHERMAN** (In @1:35 p.m.)

3. **PUBLIC HEARING – VACATION ITEMS**

**3-1. VAC2012-12: City request to vacate a platted alley.**

**OWNER/APPLICANT:** Russell Yost (applicant)

**LEGAL DESCRIPTION:** Generally described as that portion of the platted 12-foot wide alley abutting Lots 23-31 (south side), Lots 22 & 13 (north side), Lots 22 & a portion of Lot 17 (west side), Lots 11-13, all in the Owsley Place Addition and I-135 (east side), Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located between Kansas Avenue and I-135 and north of 2<sup>nd</sup> Street (WCC #I)

**REASON FOR REQUEST:** Parking lot

**CURRENT ZONING:** The subject site is platted alley right-of-way. The abutting east, west and south properties are zoned GC General Commercial (“GC”), B Multi-Family Residential (“B”) and LI Limited Industrial (“LI”). I-135 and a drainage channel abut most of the eastern portion of the platted alley.

The applicant is requesting the vacation of the described portion of the platted 12-foot wide alley right-of-way (ROW). The applicant owns all of the abutting property, with the exception of that portion abutting I-135. If needed to keep the alley from becoming a dead end, the applicant has proposed a dedication of public access to Kansas Avenue, which is public street ROW. There is a sewer line and manholes located in the entire length of the platted 12-foot wide alley. Westar has utilities located within the site. The Owsley Place Addition was recorded with the Register of Deeds April 21, 1910. Construction of I-135 in the 1960s wiped out eastern portions of the Owsley Place Addition. NOTE: VAC2001-04 was an earlier request to vacate a portion of the subject alley that was never completed.

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, 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 alley right-of-way.

- 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 April 26, 2012, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the described portion of the platted alley right-of-way 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) Dedicate by separate instrument with original signatures the entire vacated alley ROW as a utility easement for all public and franchise utilities. This must be provided prior to the vacation case going to City Council for final action.
- (2) Dedicate by separate instrument with original signatures an additional 8-foot wide easement, abutting the vacated alley. This must be provided prior to the vacation case going to City Council for final action.
- (3) Dedicate by separate instrument with original signatures an access easement, as approved by the Traffic Engineer, across the south 20 feet of Lot 17, Owsley Place Addition. This must be provided prior to the vacation case going to City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicant's expense. If needed, provide required guarantees or approved projects to ensure relocation and/or relocation of utilities, including, but not limited to, a curb cut to provide access to Kansas Avenue and any required paving of the access dedicated by separate instrument. All provided prior to the vacation case going to City Council for final action.
- (5) Any relocation or reconstruction of utilities, made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (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) Dedicate by separate instrument with original signatures the entire vacated alley ROW as a utility easement for all public and franchise utilities. This must be provided prior to the vacation case going to City Council for final action.
- (2) Dedicate by separate instrument with original signatures an additional 8 foot wide easement, abutting the vacated alley. This must be provided prior to the vacation case going to City Council for final action.
- (3) Dedicate by separate instrument with original signatures an access easement, as approved by the Traffic Engineer, across the south 20 feet of Lot 17, Owsley Place Addition. This must be provided prior to the vacation case going to City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicant's expense. If needed, provide required guarantees or approved projects to ensure relocation and/or relocation of

utilities, including, but not limited to, a curb cut to provide access to Kansas Avenue and any required paving of the access dedicated by separate instrument. All provided prior to the vacation case going to City Council for final action.

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

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

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

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**3-2. VAC2012-13: City request to vacate a portion of a platted easement.**

**APPLICANT/AGENT:** Gary D. and Cathy S. Schmitt (owners)

**LEGAL DESCRIPTION:** Generally described as vacating the south 10 feet of the platted 20-foot utility easement along the north boundary of Lot 22, Block 1, Pinnacle at Crestview Addition, Sedgwick County, Kansas

**LOCATION:** Generally located north of Central, West of 143rd Street East (BoCC #1)

**REASON FOR REQUEST:** Construction of swimming pool

**CURRENT ZONING:** The site and abutting east, west and south properties are zoned SF-5 Single-family Residential ("SF-5"). The abutting north property is zoned SF-20 Single-family Residential ("SF-20").

The applicants propose to vacate the south 10 feet of the described 20-foot wide platted utility easement. The applicants propose to build a swimming pool in their backyard encroaching upon the south half of the easement. County Public Works has no objection to the vacation. City Public Works has confirmed that water and sewer lines are located in the front of the property and that no manholes, sewer lines or water lines are located in the described platted utility easement. City Stormwater Management has confirmed there are no stormwater facilities located in the described platted utility easement. Westar Energy advises of equipment in the north ten feet of the easement outside of the area proposed to be vacated.

Comments from other franchised utilities have not been received and are needed to determine if they have utilities located within the described platted utility easement. The Pinnacle at Crestview Addition was recorded with the Register of Deeds on March 12, 1992.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from 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 April 26, 2012, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the described portion of a 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 Staff with any required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will be included with the Vacation Order and forwarded to the City Council and County Commission for action and recording with the Register of Deeds.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary, provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated. Provide Planning staff with confirmation of this requirement being completed or that suitable guarantees have been provided.
- (3) All improvements shall be according to County Standards and at the applicants' expense.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Staff with any required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will be included with the Vacation Order and forwarded to the City Council and County Commission for action and recording with the Register of Deeds.

- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary, provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated. Provide Planning staff with confirmation of this requirement being completed or that suitable guarantees have been provided.
- (3) All improvements shall be according to County Standards and at the applicants' expense.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

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**3-3. VAC2012-14: City request to vacate a portion of an easement dedicated by separate instrument.**

**APPLICANT/AGENT:** Academy, LTD (owner)

**LEGAL DESCRIPTION:** Generally described as vacating all that part of the South ½, NW ¼, of Section 5, T 27 S, R 1 W of the 6<sup>th</sup> P.M., Sedgwick County, Kansas that has been platted as Central Park Plaza Addition (Recorded February 28<sup>th</sup>, 2012 as Doc. No. 29274141) and Pearson Commercial Addition (Recorded August 22, 2007 as Doc. No. 28910462).

**LOCATION:** South of 29<sup>th</sup> Street North, East of Maize (WCC #V)

**REASON FOR REQUEST:** Eliminate portion of drainage easement

**CURRENT ZONING:** The site is zoned LC Limited Commercial ("LC") and GC General Commercial ("GC") and abutting properties are zoned SF-20 Single-family Residential to the north, SF-5 Single-family Residential ("SF-5") to the south, SF-5 to the east and LC to the west.

The applicant proposes to vacate the described portions of the drainage easement dedicated by separate instrument which is intended for surface drainage. City Stormwater Management is in agreement with the proposed easement vacation. The Pearson Commercial Addition was recorded with the Register of Deeds on August 22, 2007. The Central Park Plaza Addition was recorded with the Register of Deeds on February 28, 2012.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of drainage easement dedicated by separate instrument.

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 April 26, 2012, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the described portion of drainage easement dedicated by separate instrument 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) All improvements shall be according to City Standards and at the applicant's expense.
- (2) Any relocation of utilities will be to City Standards and at the applicant's expense. Provide any needed easements for relocated utilities. This must be provided prior to the case going to City Council for final action.
- (3) 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) All improvements shall be according to City Standards and at the applicant's expense.
- (2) Any relocation of utilities will be to City Standards and at the applicant's expense. Provide any needed easements for relocated utilities. This must be provided prior to the case going to City Council for final action.
- (3) 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.

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

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**3-4. VAC2012-15: City request to vacate easements dedicated by separate instruments.**

**APPLICANT/AGENT:** 21 Webb, LLC Attn: Gary Oborny (owner), Debra S. and Michael Mildfelt (owners)

**LEGAL DESCRIPTION:** Vacating a portion of Lot 1, Block 1, and Part of Reserve N, Remington Place Addition, Wichita, Kansas

**LOCATION:** South side of 21<sup>st</sup> Street North, East of Webb Road (WCC #II)

**REASON FOR REQUEST:** Vacate easements to allow for development

**CURRENT ZONING:** The site is zoned NO Neighborhood Office (“NO”). Abutting properties are zoned SF-5 Single-family Residential to the north and south, SF-5 Single-family Residential and NO to the east, SF-5 to the east, and B Multi-family Residential to the west.

The applicant proposes to vacate the described portions of two utility easements and a sewer easement dedicated by separate instrument. City Public Works has confirmed that no manholes, sewer lines or water lines are located in the described utility easements and sewer easement, and is in agreement with the proposed vacation. City Stormwater Management has confirmed there are no stormwater facilities located in the described utility easements and sewer easement, and is in agreement with the proposed vacation. Westar Energy has confirmed that no facilities are located within the subject easements. Comments from other franchised utilities have not been received and are needed to determine if they have utilities located within the subject easements. The Remington Place Addition was recorded with the Register of Deeds on May 10, 2001.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from 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 utility easements and sewer easement dedicated by separate instrument.

- 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 April 26, 2012, which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by the vacation of the described utility easements and a sewer easement dedicated by separate instrument 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 Staff with any required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will be included with the Vacation Order and forwarded to the City Council and County Commission for action and recording with the Register of Deeds.
- (2) All improvements shall be according to City Standards and at the applicant's expense.
- (3) Any relocation of utilities will be to City Standards and at the applicant's expense. Provide any needed easements for relocated utilities. This must be provided prior to the case going to City Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Staff with any required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will be included with the Vacation Order and forwarded to the City Council and County Commission for action and recording with the Register of Deeds.
- (2) All improvements shall be according to City Standards and at the applicant's expense.
- (3) Any relocation of utilities will be to City Standards and at the applicant's expense. Provide any needed easements for relocated utilities. This must be provided prior to the case going to City Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

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**PUBLIC HEARINGS**

4. **Case No.: CON2012-10 (deferred from 4-19-2012)** – George Shirley (owner) and Verizon Wireless, c/o Mike Douchant (applicant) request a City Conditional Use request for a Wireless Communication Facility on property zoned LC Limited Commercial on property described as:

Lots Two (2), Four (4), Six (6) and Eight (8) on Lawrence, now Broadway Avenue, in Powell's Addition to the City of Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant, Verizon Wireless, is seeking a Conditional Use to permit the construction of a 199-foot tall, wireless, galvanized steel, monopole cell phone tower on the LC Limited Commercial ("LC") zoned lot located on the southwest corner of 17<sup>th</sup> Street North and Broadway Avenue. The LC zoning district permits new, undisguised ground mounted facilities up to 120 feet for consideration as an Administrative Permit, thus the Conditional Use request for the 199-foot tall monopole. The tower does not meet the compatibility setback standards, as it is located within 15 feet (the width of the west, abutting platted alley) of TF-3 Two-Family Residential ("TF-3") zoning. The applicant is requesting a waiver of the compatibility height standards, which can be considered in the Conditional Use process. Besides the existing tower on the site, there is a small electronics store on the site.

The applicant proposes to remove their equipment and antennas from an abandoned building located at 400 East 18<sup>th</sup> Street North. The applicant's agent and RF Engineer have described the building as a potential safety and health hazard due to its deteriorating condition. The applicant has been at the 400 E. 18<sup>th</sup> Street North property since 1999. The applicant proposes to move to the LC Limited Commercial ("LC") zoned subject site. The site has an existing 199-foot tall lattice tower with guy lines and equipment located on it. Staff has found no case history on the lattice tower, but the applicant has stated that the original design drawings were dated May 13, 1986. The applicant's structural analysis of the lattice tower has found it does comply with structural standards under the proposed loading condition and that extensive modifications would have to be made in order to comply. The applicant has also stated that the foundation capacity would need to be verified before a change condition can be approved. Because of these considerations the applicant proposes to build a 199 foot monopole on the site and then tear down the existing 199-foot tall lattice tower, thus leaving the proposed monopole.

The applicant's RF Engineer has stated that the proposed facility is needed to both maintain and improve phone service in this section of Wichita. The RF Engineer states that there are no towers or structures in the immediate 1-mile area that would allow co-location opportunities to meet their communication needs. The wireless facilities map provided by the applicant shows the existing facilities in the area. This map is in general agreement with the case map generated by City IT. The applicant has provided current and desired coverage maps. The applicant has also provided comments on two other sites close to the subject site that were considered, with the OW Office-Warehouse ("OW") zoned Nibarger site located approximately 600 feet east (across the railroad tracks) of the site having strong consideration, but with no resolution in terms of a lease.

The zoning and character of the area has LC and GC General Commercial (“GC”) zoned commercial development located along both sides of Broadway Avenue. The next block west of this commercial development is mostly TF-3 Two-Family Residential (“TF-3”) zoned single-family residential development. East of Broadway and across the railroad tracks is the beginning of an extensive LI Limited Industrial (“LI”) and GI General Industrial (“GI”) zoned area. There are cell towers of different heights and design throughout this area out to I-135.

The proposed tower and associated communication frequencies and wattages must meet standards determined by the Federal Aviation Administration (FAA) to pose no hazard to air navigation or interferes with other radio/communication frequencies. The applicant has not provided an analysis of airspace in the area, which must be provided to staff prior to building permits being issued. Tower lighting must meet the FAA requirements for aircraft warning. The proposed galvanized surface of the tower will blend into the sky more readily than a red or white paint, which meets the intent of the “Design Guidelines” of the “Wireless Communication Master Plan.” The proposed tower must allow co-location for three (3) other providers. The applicant has indicated that the tower will have a triangular “top hat” antenna array, the UZC recommends antennas mounted flush to the support structure over triangular “top hat” antenna arrays, however it also recognizes that the triangular “top hat” antenna’s signal travels further than the flush mounted antennas, therefore reducing the number of needed towers.

**CASE HISTORY:** The site is located on Lot 2, 4, 6 and 8, Powell’s Addition, which was recorded with the Register of Deeds, June 9, 1887. There is no case history on the existing 199-foot tall lattice tower and its equipment.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, GC, TF-3	Commercial, single-family residential
SOUTH:	LC, TF-3	Commercial, single-family residential
EAST:	LC, OW, LI	Commercial, manufacturing, milling
WEST:	TF-3, B	Single-family residential

**PUBLIC SERVICES:** No municipally supplied public services are required. The applicant will extend electrical and phone service to the site. The site has access to Broadway Avenue, a four-lane arterial street and 17<sup>th</sup> Street North, a local street. The 2030 Transportation Plan shows no change to the current status of this road.

**CONFORMANCE TO PLANS/POLICIES:** Per the amended Wireless Communication Facility Ordinance, new wireless communication facilities over 120 feet in height in the LC zoning district may be permitted with a Conditional Use.

The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan requires a Conditional Use for new undisguised ground mounted facilities over 120-feet in height in the LC zoning district and that they comply with the compatibility setback standards; the 199-foot tall tower’s site is located within 15 feet of TF-3 zoning and does not meet those setback standards. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area as much as possible. The proposed 199-foot monopole tower will replace an existing 199-foot lattice tower with guy lines. The

site has residential uses within 15 feet of it. There are numerous towers located east of the site, across Broadway and the railroad tracks; 2) Minimize the height, mass, or proportion. The tower is similar or taller in height, mass and proportion to other monopole towers in the area; 3) Minimize the silhouette; the proposed monopole will have a more silhouette than the lattice tower it proposes to replace. The 199-foot monopole tower uses triangular “top hat” antenna arrays, rather than the preferred flush mounted antennas. The triangular “top hat” antenna’s signal travels further than the flush mounted antennas, therefore, in theory, reducing the number of needed towers; 4) Use colors, textures, and materials that blend in with the existing environment. The monopole tower will have a galvanized surface, which will blend into the sky more readily than red or white paint; 5) Be concealed or disguised as a flagpole, clock tower, or church steeple. These options have not been presented; 6) Be placed in areas where trees and/or buildings obscure some or all of the facility. There are some multi-storied commercial buildings in the area and mature trees in the area around the site, which will help to obscure the site; 7) Be placed on walls or roofs of buildings. The application has done this in the past, but is currently in the process of removing antennas and equipment from a poorly maintained building; 8) Be screened through landscaping, walls, and/or fencing. The applicant needs to provide solid screening with the minimum being 6-8 foot tall wooden fence and landscaping planted around it.

The 2030 Wichita Functional Land Use Guide depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities. A wireless communication facility is a commercial use.

**RECOMMENDATION:** Considerations in this request include replacing an old 199-foot tall lattice tower with guy lines, which is at full capacity in regards to carriers, with a 199-foot tall monopole that will be built to allow more carriers. Another consideration is the site’s extremely close proximity to single-family residential development, which amounts to the 15-foot width of the west abutting alley. This close proximity means it would be difficult for any tower on this site to comply with the compatibility standards and provide adequate coverage. Looking from the site to the east one can see numerous communication towers, all located within an industrial area. This is where the applicant is moving from, after failing to find co-location or not being able to agree on a fair market value for property in the industrial area. Replacing the old tower that appears to have been at this location since 1986 with a new monopole that maintains current coverage and may improve coverage with the additional co-location opportunities seems to be at best a wash. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **APPROVED** subject to the following conditions:

- A. All requirements of Art. III Sec. III.D.6.g. of the Unified Zoning Code shall be met. Waive the compatibility setback requirement.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a “monopole” design that generally conforms to the approved site elevation and that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The support structure shall not exceed 199 feet in height and shall be designed and constructed to accommodate communication equipment for at least three (3) wireless service providers.

- E. The tower shall conform to FAA regulations in regards to analysis of airspace in the area, which includes conformation that the height of the tower is not a hazard to air navigation (including the need or not for lighting) and that the tower does not interfere with other radio/communication frequencies. The applicant shall submit a current copy of FAA approval to the MAPD and the Code Enforcement Office prior to the issuance of a building permit.
- F. The tower site located within the owner's (+) 0.18-acres shall be developed in general conformance with the approved revised site and landscape plan. These plans must show the type and size of fencing around the site, parking, all light poles, lights, power poles, cabinets, equipment or buildings within the fenced in site or in the immediate area if it is to be used by the site. The plan must identify existing and/or proposed trees and shrubs, give their total numbers and their general size to determine if it meets screening requirements of the Unified Zoning Code (UZC) Art. IV, Sec. IV-B.3.b.1. The site plan must identify the utility access easement as being current or proposed. If it is proposed it must be recorded. If a surface is needed for the drive/access easement, it must be approved by the Zoning Administrator. All improvements and construction of the facility/tower shall be completed within a year and before the facility becomes operational.
- G. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations. Provide the Stormwater Engineer with any required plans for review and approval of the site.
- H. 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.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning and character of the area has LC and GC General Commercial ("GC") zoned commercial development located along both sides of Broadway. The next block west of this commercial development is mostly TF-3 Two-Family Residential ("TF-3") zoned single-family residential development. West of Broadway and across the railroad tracks is the beginning of an extensive LI Limited Industrial ("LI") and GI General Industrial ("GI") zoned area. There are cell towers of different heights and design throughout this area out to I-135.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC and is currently used as site for a 199-foot tall lattice tower with guy lines and its equipment and an electronics store. The electronics store is permitted by right in the LC zoning district. There is no case history on the existing tower, which may have been on the site since 1986. Today that tower would require a Conditional Use and waiving of the compatibility setbacks for location on the site, which is what the applicant is requesting for the replacement tower, a 199-foot tall monopole tower.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The 199-foot lattice tower with guy lines is proposed to be replaced with a 199-foot monopole tower. The proposed monopole will have more silhouette than the lattice tower it proposes to replace. However, the conditions of approval will add solid screening and landscaping around the site, to help minimize the eye level visual impact.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility partially to conform to the Location Guidelines of the Wireless Communication Master Plan since there appears to be no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. It is always possible that other facilities may be presented as alternative/co-location sites during the public hearing, in which case the applicant will need to address those claims/opportunities for possible co-location. The application fails to meet the compatibility setback requirements and any tower that would provide adequate coverage probably could not meet the compatibility setback requirements. The proposed wireless communication facility attempts to conform to the Design Guidelines of the Wireless Communication Master Plan through its monopole design and by utilizing an unobtrusive color with a matte finish to minimize glare.
5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed tower is not a hazard to air navigation (including the need or not for lighting) and that the tower does not interfere with other radio/communication frequencies.

**BILL LONGNECKER**, Planning Staff presented the Staff Report. He reported that District Advisory Board (DAB) VI unanimously approved the application and that no one spoke in protest of the request at the meeting. In addition, he mentioned that he had received no phone calls or correspondence regarding the application.

**WARREN** asked about guide cables going beyond the property line.

**LONGNECKER** replied that according to the site plan everything is within the property line and not into the alley right-of-way.

**FOSTER** clarified that the tower located on 18<sup>th</sup> Street would go away and that the applicant can't come back and rebuild another at that location.

**LONGNECKER** said yes, but the Commission could make that part of the conditions. He said the applicant will remove the tower from the building on 18<sup>th</sup> Street and erect a monopole at the current site. He said they are specifically approving only the monopole as part of the conditions.

**ALDRICH** mentioned Federal Aeronautical Administration (FAA) standards and asked if the applicant has provided the analysis for the air space. He also asked about setback standards in TF-3 zoning.

**LONGNECKER** said the FAA approval will need to be provided prior to the applicant obtaining any kind of building permit. He added that the FAA requirement is for the height and radio frequency and includes Federal Communications Commission (FCC) approval also. He explained that the compatibility height standards for wireless communication towers state that for every foot in height, there needs to be a foot separation between the tower and TF-3 or more restrictive zoning. He said for a 199 foot tower, there needs to be 199 feet between the tower and TF-3 or more restrictive zoning including SF-5 or SF-10. He referred to the Staff Report where the applicant has requested a waiver of the compatibility standards.

**ALDRICH** clarified that the reason for the compatibility standard was in case the tower fails it will not fall on structures.

**LONGNECKER** acknowledged that was correct.

**DENNIS** clarified that if the Commission waives the compatibility standard does that mean the City assumes responsibility or liability if the tower fails and falls on a structure.

**SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY** said the Commission is approving zoning and compatibility issues. She said liability was a separate issue and she didn't think approval of the application would increase the likelihood that the City would be responsible.

**SHEETS** asked about engineering specifications for wind capacity.

**LONGNECKER** commented that the Office of Central Inspection (OCI) would have that information when the applicant requests the building permit. He said the Planning Commission is only looking at the Conditional use request and zoning.

**FOSTER** asked about a condition to preclude the applicant from building another tower at the 18<sup>th</sup> Street location and asked since it is a separate property, is it appropriate for the Commission to put a condition on another site.

**LONGNECKER** commented that the basis of the application was that the applicant needed to relocate off the 18<sup>th</sup> Street site because of building deterioration. He said the Commission can make no rebuilding at that site a condition of approval of this request if they so wish.

**WARREN** clarified that if the tower is removed from the 18<sup>th</sup> Street site and at a later date someone wants to build a tower, don't they have to go through the entire zoning process.

**LONGNECKER** responded yes and added that someone could build a bigger tower and it could possibly go through the internal administrative process since there is LI and GI zoning in the area. He asked legal if the Commission adds a no building on the 18<sup>th</sup> Street site clause as a condition of this approval, will that hamper future development of the 18<sup>th</sup> Street site.

**DICKGRAFE** said the condition would limit future development of that site; however, she thinks that would be an appropriate condition if that is what the Planning Commission wants to do.

**LONGNECKER** suggested obtaining a notarized statement from the applicant regarding the issue.

**DICKGRAFE** commented if the applicant is willing to do that.

**MIKE DOUCHANT, DOLAN REALTY ADVISORS, ST. LOUIS, MO** said they do site acquisition work for Verizon. He said they don't object to any condition restricting Verizon's use of the property at 18<sup>th</sup> Street. He mentioned that sometimes the verbiage can be confusing and clarified that there are rooftop antennas at that site; it isn't actually a tower itself. He added that the building is deteriorating and that is why they must relocate to another site. He said they don't object to the proposed condition and; that it costs a lot to leave the site and that they won't be returning.

Responding to questions regarding timeline, process and insurance, **DOUCHANT** said the landlord would like them to leave a 40-foot stub so that he can test some of his equipment. He said what they are proposing is called a "drop and swap" in the communication business. He added that they have also

completed a “fall zone” study which shows that towers usually collapse into themselves as opposed to toppling over. He said they provide sufficient insurance in case of disasters.

**DENNIS** clarified that the request was for a 199 foot tower and said this was the first time they have heard about a 40-foot stub remaining at the site on 18<sup>th</sup> Street.

**LONGNECKER** clarified that staff’s recommendation was for one 199-foot monopole tower. He said staff did not approve a stub tower.

**WARREN** asked what process the applicant would have to go through to retain a 40-foot stub.

**LONGNECKER** said he did not believe the 40-foot stub would meet compatibility standards. He said staff’s recommendation is for the monopole period, the application did not say anything about a 40-foot stub.

**WARREN** clarified that the owner will have to go through the zoning process to retain the 40-foot stub.

**SHEETS** asked if they could make the 40-foot stub part of the application now.

**LONGNECKER** said the property owner has a tower at the site now.

**ALDRICH** verified that the existing tower on 18<sup>th</sup> Street will be removed.

**LONGNECKER** responded that was correct.

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

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

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5. **Case No.: CON2012-13 (deferred from 4-19-2012)** – DeVore & Sons (owners) Verizon Wireless, c/o Mike Douchant (applicant) request a City Conditional Use for a Wireless Communication Facility on property zoned LI Limited Industrial on property described as:

Lot Sixteen (16), Comotara Industrial Park Fourth Addition to Wichita, Sedgwick County, Kansas

**BILL LONGNECKER**, Planning Staff announced that this item was going to be handled administratively.

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6. **Case No.: ZON2012-14** - Central and Vassar Development LLC (T.D. O’Connell) (applicant)/Ferris Consulting (Greg Ferris) (agent) request City zone change request from GO General Office to LC Limited Commercial with a Protective Overlay on property described as:

Lot 1, Block B in Central Bank & Trust Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is seeking a zone change from GO General Office (“GO”), subject to the development standards found in Protective Overlay (“PO”) #134 (“PO #134”) that are detailed in the case history section located below, to LC Limited Commercial (“LC”), subject to a revised Protective

Overlay, on .58 acre located at the southeast corner of East Central Avenue and North Vassar Avenue. The site is currently undeveloped, and has been for 20 plus years. The property has 134.44 feet of frontage along Central Avenue and 188.89 feet along Vassar Avenue. As indicated in the agent’s attached letter dated April 5, 2012, and associated site plan, the applicant proposed to develop a 6,000 square-foot building on the southern one-third of the site. Parking is proposed to be located on the northern two-thirds of the lot. The applicant’s agent has advised staff that the applicant has two potential restaurant operators considering the site if the zone change is approved.

The applicant’s proposed protective overlay contains the following development standards: (even though the site would be zoned LC) uses on the property would be restricted to the Neighborhood Retail (“NR”) district except it would allow a restaurant that exceeds 2,000 square feet; restaurants would be permitted a drive-up window without audible speakers; LC screening requirements would be required and signage restricted to NR standards would be allowed. The applicant’s site plan depicts a relocated driveway on Central from the northeastern to the northwestern quadrant of the site and closure of the northernmost driveway along Vassar Street. The trash dumpster is proposed to be located at the existing southernmost curb cut, approximately 60 feet north of the site’s southern property line. If developed as shown on the site plan, the proposed 100-foot by 60-foot building would act as a buffer between the proposed parking lot on the north and the residences located to the south and east of the site. However, the proposed Protective Overlay does not require development in conformance with the site plan; nor does it show how a drive-through would be located on the site.

As currently zoned the site is not permitted to have a restaurant since the GO district does not permit restaurants. The NR Neighborhood Retail (“NR”) zoning district is the first zoning district to permit a restaurant but it is subject to Sec. III-d.6.t. Section III-d.6.t limits restaurants in the NR district to a maximum size of 2,000 square feet in gross floor area and prohibits drive-up window or in-vehicle food service. The LC district does not restrict restaurants in the same fashion as the NR district. Additional NR development standards include: no individual commercial use can exceed 8,000 square feet; the NR district is not to be used on sites that exceed six acres in size and no outdoor storage or display is permitted for commercial uses.

The table presented below provides a comparison of the uses currently permitted; those uses proposed by the applicant and those uses recommended by planning staff. The uses lined out are allowed in the GO district but were excluded by the existing Protective Overlay.

Uses Permitted in the GO District; Uses lined out are not permitted by the <b>Current PO</b>	Uses Permitted in the NR District; Uses lined out are not permitted by the <b>Proposed PO</b>	PO Uses <b>recommended</b> by staff
Single-family	Single-family	Single-family
Duplex	Duplex	Duplex
Multi-family	Multi-family	Multi-family
Accessory Apartment	Accessory Apartment	Accessory Apartment
Assisted Living	Assisted Living	Assisted Living
<del>Group Home</del> (Cannot now be excluded by state law)	Group Home (Cannot now be excluded by state law)	Group Home
<del>Group Residence Limited and</del>	Group Residence, Limited	

General		
Cemetery		
Church	Church	Church
Community Assembly		
Day Care, Limited and General	Day Care, Limited and General	Day Care, Limited and General
Golf Course		
Hospital		
Library	Library	Library
Nursing Facility		
Parks and Recreation	Parks and Recreation	
Recycling Collection Station, Private	Recycling Collection Station, Private	
School, Elementary, Middle and High	School, Elementary, Middle or High	
University or College		
Utility, Minor	Utility, Minor	Utility, Minor
Automated Teller Machine	Automated Teller Machine	Automated Teller Machine
Bed and Breakfast Inn	Bed and Breakfast Inn	Bed and Breakfast Inn
Broadcast/Recording Studio	Broadcast/Recording Studio	
Funeral Home		
Hotel/Motel		
Marine Facility		
Medical Service	Medical Service	Medical Service
Office, General	Office, General	Office, General
Parking Area, Commercial	Parking Area, Commercial	Parking Area, Commercial
Wireless Communication Facility	Wireless Communication Facility	
Asphalt or Concrete Plant, Limited	Asphalt or Concrete Plant, Limited	
Agriculture	Agriculture	Agriculture
Personal Care Service (CU approval required)	Personal Care Service	Personal Care Service
Personal Improvement Service (CU approval required)	Personal Improvement Service	Personal Improvement Service
Animal Care, Limited and General		
Bank or Financial Institution	Bank or Financial Institution	
Correctional Placement Residence, Limited and General	Correctional Placement Residence, Limited	
Heliport		
Printing and Copying, Limited	Printing and Copying, Limited	
Vocational School		
Warehouse, self-service		
	Restaurant, limited to max.	Restaurant exceeding 2,000

	<del>size of 2,000 square feet and no drive through or in-car service</del>	square feet w/o drive through
	Retail, General, limited to max. size of 6,000 square feet	

Selected uses permitted by right in the GO district include: single-family, duplex, multi-family, assisted living, group residence limited and general, church, community assembly, day care limited and general, hospital, nursing facility, ATM, bed and breakfast inn, funeral home, hotel/motel subject to Sec. III-D.6.j, medical service and general office. For comparison purposes, selected uses permitted by right in the NR district include: single-family, duplex, multi-family, assisted living, group residence limited and general, church, day care limited and general, *school elementary, middle and high*, ATM, *bank*, bed and breakfast inn, medical service, general office, *personal care service, personal improvement service, restaurant limited to a maximum size of 2,000 square feet gross floor area and no drive-up window service or in-vehicle food service* and *retail general*. (Uses italicized are not permitted in the GO district.) The NR district also limits individual commercial uses to a maximum gross floor area of 8,000 square feet and does not permit outside storage or display.

Unified Zoning Code (“UZC”) compatibility setback standards (Sec. IV-C.4) apply to the side and rear lot lines adjacent to property zoned TF-3 or more restrictive. In this case there is SF-5 and/or TF-3 zoning abutting the southeast and southern property lines. The minimum building compatibility setback is 15 feet plus one foot for each five feet of (subject tract) lot width over 50 feet. In no case shall the compatibility setback standards alone require more than a 25-foot setback. In this instance, the site is 134.44 feet wide resulting in a side (east) and rear (south) yard compatibility setback of 31.88 feet; however, the maximum setback distance required by the code is 25 feet. Compatibility height standards limit building height to a maximum height of 35 feet when located within 50 feet of TF-3 or more restrictive zoning. Compatibility standards also require dumpsters to be located twenty feet from TF-3 or more restrictive zoned property. (It is approximately 23 feet to the south side of the southernmost driveway.) The UZC requires a wooden screening fence, at least six feet tall, and/or landscaping and berms equal to a six-foot tall fence that provides year round solid screening. The landscape ordinance requires buffering of one shade tree every forty feet if there is a fence or one tree every thirty feet plus five shrubs without a fence. The landscape ordinance will also require parking lot screening and a landscaped street yard.

The NO Neighborhood Office (“NO”), NR and GO zoning districts have the same signage regulations, which permit ground or pole signs up to 32 square feet in gross surface area; multi-tenant lots sharing the same sign may have up to twenty-four feet each to a maximum of ninety-six square feet. Sign height is permitted to be up to twenty-two feet. Signs are to be spaced 150 feet apart if there is more one sign per zoning lot. Building signage is limited in the NR district to thirty-two square feet in area and thirty feet in height per building elevation for each major use provided the building elevation to which any sign is to be attached has one of the following: street frontage; is adjacent to a nonresidential zoning district or if adjacent to a residential district, there must be parking, loading or open space with a depth of 150 feet or more as measured from the sign face to the property line which adjoins the residential zoning district. Lighting of such signs is limited to direct or internal illumination of white light only and without flashing or moving images.

The table below compares the development standards contained in the existing Protective Overlay to those proposed by the applicant.

Existing Protective Overlay-134	Proposed Protective Overlay
A. Provide cross-lot access to the property located to the east and close the northernmost and the southernmost of the three existing drives on Vassar Avenue	
B. Allow those uses permitted by right in the GO zoning district and personal care service and personal improvement service granted as a Conditional Use, with the following uses prohibited: animal care, limited and general; bank or financial institution; broadcast and recording studio; cemetery; correctional placement residence, limited and general; funeral home; group home, limited, general and commercial; group residence, general and limited; manufactured home; heliport; hospital; hotel or motel; marine facility; recreation; printing and copying, limited; recycling collection station, private; school, elementary, middle and high; vocational school; warehouse, self-service; wireless communication facility; and all industrial, manufacturing and extractive uses	Uses on the property would be restricted to the Neighborhood Retail (“NR”) district except it would allow a restaurant that exceeds 2,000 square feet; restaurants would be permitted a drive-up window without audible speakers.
C. The development shall meet all landscaping, screening, lighting, building setbacks, compatibility standards and buffering requirements, per the Unified Zoning Code and the Landscape Ordinance, including one shade tree or the equivalent every 20 feet along the residential edge(s) of the development for any nonresidential development, and provide a 10-foot landscape buffer along the south property line; install a solid screening fence a minimum of six feet in height and plant trees at a rate of one tree per 20 feet along the south property line and the southern 60 feet of west property line and parking lot landscaping and screening extending to the drive on Vassar, and maintain the existing solid evergreen screen and solid screening fence on the southern 100 feet of the east property line	LC screening requirements would be required
D. Restrict building height to 35 feet	
E. Restrict freestanding signs to one monument type sign no more than eight feet in height and subject to the size limitations of the GO district	Signage restricted to NR standards would be allowed

<p>F. Require nonresidential buildings to be residential in architectural character and materials, including that metal shall not be used as exterior materials except for incidental accent or trim</p>	
<p>G. All uses shall be developed to minimize light trespass and glare from nonresidential uses to residential zoning districts by employing cut-off luminaries and by limiting light fixtures, including base and poles to no more than 14 feet</p>	
<p>H. No sound amplification systems for projecting music or human voices shall be permitted on the property if the music and/or voice can be heard within any residential zoning district, which is located within a 500-foot radius of the site</p>	<p>Restaurants would be permitted a drive-up window without audible speakers</p>

**CASE HISTORY:** Case number ZON2003-00069 was a change in zoning request from SF-5 Single-family Residential (“SF-5”) and GO to LC. On April 9, 2004, the City Council approved GO subject to PO #134. Protective Overlay 134 contained eight development standards: 1) provide cross-lot access to the property located to the east and close the northernmost and the southernmost of the three existing drives on Vassar Avenue; 2) allow those uses permitted by right in the GO zoning district and personal care service and personal improvement service granted as a Conditional Use, with the following uses prohibited: animal care, limited and general; bank or financial institution; broadcast and recording studio; cemetery; correctional placement residence, limited and general; funeral home; group home, limited, general and commercial; group residence, general and limited; manufactured home; heliport; hospital; hotel or motel; marine facility; recreation; printing and copying, limited; recycling collection station, private; school, elementary, middle and high; vocational school; warehouse, self-service; wireless communication facility; and all industrial, manufacturing and extractive uses; 3) the development shall meet all landscaping, screening, lighting, building setbacks, compatibility standards and buffering requirements, per the Unified Zoning Code and the Landscape Ordinance, including one shade tree or the equivalent every 20 feet along the residential edge(s) of the development for any nonresidential development, and provide a 10-foot landscape buffer along the south property line; install a solid screening fence a minimum of six feet in height and plant trees at a rate of one tree per 20 feet along the south property line and the southern 60 feet of west property line and parking lot landscaping and screening extending to the drive on Vassar, and maintain the existing solid evergreen screen and solid screening fence on the southern 100 feet of the east property line; 4) restrict building height to 35 feet; 5) restrict freestanding signs to one monument type sign no more than eight feet in height and subject to the size limitations of the GO district; 6) require nonresidential buildings to be residential in architectural character and materials, including that metal shall not be used as exterior materials except for incidental accent or trim; 7) all uses shall be developed to minimize light trespass and glare from nonresidential uses to residential zoning districts by employing cut-off luminaries and by limiting light fixtures, including base and poles to no more than 14 feet and 8) no sound amplification systems for projecting music or human voices shall be permitted on the property if the music and/or voice can be heard within any residential zoning district, which is located within a 500-foot radius of the site.

The property is platted as Lot 1, Block B, Central Bank & Trust Addition, recorded on September 10, 1980. The site has platted twenty-foot building setbacks along the north and west property lines and a ten-foot utility easement is located along the eastern property line.

**ADJACENT ZONING AND LAND USE:**

NORTH: GO and B; apartments, an office building and a regional hospital  
SOUTH: SF-5; single-family residences  
EAST: GO, TF-3 and SF-5; medical office, single-family residences  
WEST: LC and GO; bank

**PUBLIC SERVICES:** Central Avenue is a four-lane arterial with fifty-feet of half-street right-of-way that carries over 19,000 average daily west-bound trips (2006 data) at Hillside. The site is serviced by all other publicly supplied services. Vassar is a local street with 60 feet of full right-of-way adjacent to the subject site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for “local commercial” uses. The local commercial category contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for LC zoning be APPROVED, subject to the following amended Protective Overlay #134:

- A. Provide cross-lot access to the property located to the east. Access shall be as approved by the Traffic Engineer and limited to one curb cut on Central Avenue and two on Vassar Street, including access to the trash dumpster if the dumpster is accessed directly from Vassar Street.
- B. Even though the property is zoned LC, the property would be restricted to uses permitted by right in the Neighborhood Retail (“NR”) district as follows: single-family; duplex; multi-family; accessory apartment; assisted living; church; day care, limited and general; library; utility, minor; automated teller machine; bed and breakfast inn; medical service; office, general; parking area, commercial; agriculture; personal care service; personal improvement service and a restaurant that exceeds 2,000 square feet without drive through service. No sound amplification systems for projecting music or human voices shall be permitted on the property if the music and/or voice can be heard within any residentially zoned property located with a 500-foot radius of the site.
- C. The development shall meet all landscaping, screening, lighting, building setbacks, compatibility standards and buffering requirements, per the Unified Zoning Code and the Landscape Ordinance, including one shade tree or the equivalent every 20 feet along the residential edge(s) of the development for any nonresidential development, and provide a 10-foot landscape buffer along the south property line; install a solid screening fence a minimum of six feet in height and plant trees at a rate of one tree per 20 feet along the south property line and the southern 60 feet of west property line and parking lot landscaping and screening extending to the drive on Vassar, and maintain the existing solid evergreen screen and solid screening fence on the southern 100 feet of the east property line.
- D. Trash dumpsters and enclosures shall not be located within any platted or zoning building setback or any compatibility building setback.

- E. Building height is restricted to a maximum height of 35 feet.
- F. Restrict freestanding signs to one monument type sign no more than eight feet in height and subject to the sign regulations of the NR district. Off-site billboard, portable and electronic signage is prohibited.
- G. Require nonresidential buildings to be residential in architectural character and materials, including that metal shall not be used as exterior materials except for incidental accent or trim.
- H. All uses shall be developed to minimize light trespass and glare from nonresidential uses to residential zoning districts by employing cut-off luminaries and by limiting light fixtures, including base and poles to no more than 15 feet.

The following information is provided for comparison purposes between uses permitted in the existing Protective Overlay and the proposed zone change and Protective Overlay: Group home (can't be prohibited if single-family residential is allowed); animal care, limited is not permitted in the NR; animal care, general is not permitted in either the NR or the GO; group residence, general is not permitted in NR; cemetery is a CU in NR; animal care, general is first permitted in GC; funeral home in GO; heliport (CON in all districts); hospital not allowed in NR; hotel/motel not allowed in NR; marine facility not allowed in NR; recreation, indoor/outdoor not allowed in NR; recycling collection station, private not allowed in NR; vocational school not allowed in NR; warehouse, self-service not allowed in NR.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The neighborhood surrounding the application area is fully developed with a mix of single-family and multi-family residential uses, a dental office, a bank and general offices that are zoned SF-5, TF-3, GO and LC. Central Avenue is a four-lane arterial street carrying over 19,000 average daily trips. Land use located further east of the application area along Central Avenue is primarily residential while land use to the west is primarily office and commercial. The subject site is the last undeveloped land with Central Avenue frontage for a considerable distance.
2. The suitability of the subject property for the uses to which it has been restricted: Since 2003, the site has been zoned GO, subject to PO #134 that permits approximately nineteen land uses. The specific permitted uses are outlined in the case history section and comparison table located above. Of the nineteen permitted uses, the duplex, multi-family, general office and medical service uses appear to have been the most likely to have been developed on the site. Presumably they are economically viable prospects given that those or similar uses have developed on nearby property; however, the site remains vacant as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: As noted above, the property is currently zoned GO, subject to PO #134 that permits approximately nineteen uses by right, such as single-family through multi-family residential, assisted living, church, community assembly, day care, medical service or general office. The proposed zone change and Protective Overlay would add the following uses: group residence, limited; recreation; recycling collection station, private; school, elementary, middle or high; broadcast/recording studio; asphalt or concrete plant, limited; personal care service; personal improvement service; bank or financial institution; printing and copying, limited; restaurant and retail general. Some of the uses that would be added if approved as requested, such as "retail, general" have the potential to generate higher traffic volumes, noise, lighting or litter than can be

found in the single-family, apartment, office and bank uses abutting or across the street from the subject tract. The uses proposed by staff attempt to maintain the spirit of the existing Protective Overlay but allow for additional uses that should not significantly detrimentally impact nearby properties if developed per code and as recommended.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request could potentially facilitate the development of an existing vacant lot that is served by all required public services and offer to the public additional residential, office, personal improvement or personal care services. Presumably denial would represent a loss in economic value or opportunity to the applicant.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for “local commercial” uses. The local commercial category contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.
6. Length of time the property has remained vacant as currently zoned: The property has been vacant for at least 24 years, and has been vacant as currently zoned since 2004, as described in the case history section above.
7. Impact of the proposed development on community facilities: The site is served by existing community facilities. Traffic will increase from the property once it is developed; however, existing facilities are adequate to serve anticipated uses.

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

**JOHNSON** asked staff if they were okay with the proposed drive-thru if the other drives were vacated.

**MILLER** said staff generally does not recommend drive-thrus that close to single-family homes.

**FOSTER** mentioned that he had a concern about the drive-thru and added that trash service to the site will be a challenge. He also asked about the landscape buffer being cut down to 5 feet on the southeast corner. He said he thinks an 8-foot wall would be appropriate in terms of screening.

**MILLER** said the Planning Commission can request anything they feel is reasonable and necessary to address the circumstances of the case.

**G. SHERMAN** mentioned that 22 parking spaces for a 4,500 square foot restaurant seems way under par.

**MILLER** responded that the parking standards are relative to the number of seats provided in the restaurant. He commented that the Unified Zoning Code (UZC) does not require a site plan with a zoning change request; however, the Commission could make that a condition under the PO.

**FOSTER** asked about parking on the west side located in the setback or right-of-way.

**MILLER** said he believes the dimensions on the site plan are correct and added that parking is allowed in the setback in LC zoning.

**GREG FERRIS, REPRESENTATIVE FOR THE PROPERTY OWNER** made a quick correction and said there will be a written agreement between property owners for cross lot circulation, but he wanted to clarify that both properties were not owned by the same owner. He said the owners have owned the property for a number of years and that prospects of developing this site as an office have been tried and have not been successful. He said the owners were approached by a local pizza company whose owner lives in College Hill and who has a small pizza restaurant in Old Town (Picasso's) and would like to have a small type of neighborhood pizza place in the College Hill area where they believe it can fit. He mentioned architectural covenants that limited metal on the structure and that it must conform to residential standards which they do not have a problem with because that is the way the applicant would like to develop this site.

**FERRIS** clarified that they are allowed to have parking within the building setback not the right-of-way. He said once the application is approved they will have a surveyor go in and design the parking, etc. He commented that they provided the site plan to give the Commissioners an idea of the size of the building (4,300 square feet) which is not a very big building and a neighborhood type restaurant. He said if for some reason the pizza idea is not successful the owners have a bagel shop in the wings which is also a neighborhood retail type environment. He said 2,000 square feet for development just isn't enough so they are requesting LC zoning with neighborhood restrictions. He said they have no problem with additional staff restrictions. He said they would like the option of a drive-thru for people to be able to pick up pizza.

**FERRIS** said they have been working with the City Traffic Engineer concerning access issues and stated that they will actually be closing 2 drives onto Central and creating a single drive for both parcels. In addition, he said they are giving up a drive on Vassar. He said they believe this also creates a neighborhood friendly environment. He said they have no problem with an 8-foot solid fence if the Commission would like to make that a requirement. He said the character of the neighborhood is mixed use (office, light commercial, residential, apartments and institutional) and they believe this zoning will fit and will not have a negative impact. He said they do not believe the site is it suitable to what it has been restricted to because it has been vacant for a very long time. He mentioned development policies and said they believe the limited scope they are proposing will have no detrimental impact on the neighborhood. He said they believe this will have a positive impact on the neighborhood instead of a vacant parking lot that can become an attractive nuisance. He said they believe a well-lit, attractive building on the property will be a gain to public health and safety. He mentioned requirements of the "Golden Rules" policy and said they believe this site qualifies for rezoning. He said this will be a quality development that fits into the neighborhood. He concluded by stating that the owners were present for specific questions.

**D. SHERMAN** asked if they foresee this as a full blown drive-thru or just a pick up window.

**FERRIS** said it is a pick up window with no audible sound or signage. He added that people will not be able to place orders at the drive-thru, just pick up orders.

**ALDRICH** asked about the location of the trash receptacles.

**FERRIS** said whoever designs the site will take staff's limitations and setback requirements into consideration. He also mentioned screening requirements, the 10-foot landscape buffer and 8-foot screening wall. He said once the application is approved, the applicant will file a revised site plan to be approved by staff.

**FOSTER** commented that he liked the idea of staff approving a revised site plan.

**PAT COULTER, 413 N. VASSAR** said two-thirds of the traffic coming from Vassar instead of Central, which was designed to carry the traffic, affects his family and surrounding property owners a lot. He cautioned the City that this neighborhood is being attacked on every side. He said wrecks occur on 3<sup>rd</sup> and Vassar (one block south of the site) every day. He said Vassar was not designed to carry this much traffic because it is a 40-foot residential street and cars hit at the "jog" in the street. He said he would hate to have a business relying on traffic and customers coming from the interior part of College Hill neighborhood. He said Central is the arterial and people need to access the property from Central rather than Vassar. He said he has designed Pizza Hut sites and it is easy to say that they will not have a speaker box or menu; he mentioned that the resident to the west immediately south of Intrust Bank cannot sleep because car lights shine into his house all night. In addition, he said his neighbor gets to listen to all the people who come through the bank drive-thru window. He mentioned the dilapidated fence falling down on the south side of the property which was originally put in by another zoning case. He said the biggest issue is getting traffic up and down Vassar without making a mess. He said Vassar is 1 lane and if he parks his car in the front of his house and his neighbor parks in front of his, you can't get through and it closes off the street. He said Vassar is not designed for more traffic. He recommended making no left turn signs so people will not use Vassar to access wherever they are going. He concluded by mentioning closing the curb cuts on the arterial Central. He said the City has created a bottle neck in middle of Central with the median that only directs traffic east or west and is not designed to handle curb cuts in and out of a development. He said the City needs to look at how they can redesign the whole median area so anyone who developed this lot could use Central. He also mentioned children coming from College Hill School walking across Central and down Vassar.

**G. SHERMAN** asked Mr. Coulter to point out where he lived.

**COULTER** said Intrust Bank does a good job taking care of their property, but there is so much commercial development close by and they have to pick up trash all the time.

**JOY COULTER, 413 N. VASSAR** mentioned traffic issues and said that at 6:00-7:00 p.m. in the evening, you can hardly get down Vassar Street. She said cars and trucks are parked on both sides of the street and that it is very dangerous. She added that they have a lot of children on Vassar and she is concerned about the possibility of an accident where a child could possibly get killed. She said she thinks the City should be more aware of family and residential in the area instead of putting a restaurant in her neighborhood. She said she is very against this for safety reasons. She said they live in a nice area. She said the bank tore down a house and turned a similar area into a park. She agreed that the site has been an eyesore but asked why they can't do something like a park with grass and trees like the bank did that will be useful for the whole area instead of creating a dangerous situation. She concluded by stating that the neighborhood doesn't want this restaurant

**SHARON LEWIS, 451 N. CLIFTON** said she lives next door to the doctor's office. She said the entrance off of Central is where the doctor usually parks and added that it is a pretty small space to be running the majority of the traffic through.

**FERRIS** reiterated that they have been working with the City Traffic Engineering and he failed to mention that they wanted to create left turns in and out onto Central which reduces the need to use Vassar and also addresses the median situation. He said the developers did not want traffic on Vassar and that the principal drive will be off of Central.

**WARREN** asked what type of material will be used for the screening fence.

**FERRIS** said right now they were planning on installing an 8-foot solid wood fence; however, he added that they would be willing to work with staff if something else were required but they believe a wood fence and landscaping will be adequate.

**FARNEY** asked about possible location of the trash dumpsters.

**FERRIS** speculated that the trash receptacles may end up north of the building to meet the 20-foot setback. He said they will be screened. He said the engineering firm will determine where they will be located based on staff restrictions.

**FOSTER** asked about the possibility of increasing the landscape buffer to 15 feet.

**FERRIS** said he thinks a 10-foot landscape buffer on a site this size is significant. He said the Commission has the discretion to recommend that; however, it was hard for him to say yes to that at this time.

**FOSTER** said he is concerned about the wood fencing which he said does not stand up over time. He said he would prefer a concrete or masonry type wall for this situation.

**G. SHERMAN** said he feels the Commission got too detailed on examining the site plan which was pretty crude and will have to go through the building permit process for parking, setbacks and placement of the dumpsters.

**FOSTER** asked about the fence versus a masonry wall. He asked Mr. Coulter to come to the podium. He asked if there were trees along the southern and eastern portions of the site that might be damaged by construction of a masonry wall.

**COULTER** indicated that there is a mulberry bush on the south side. He said he was not sure what was on the east side.

**MILLER** requested clarification on the motion regarding approval of the drive-thru and whether the 8-foot solid screening would be a wall or a fence.

**ALDRICH** said yes the motion includes the drive-thru. He said the 8-foot solid screening requirement was based on what is required by the UZC.

**MOTION:** To approve subject to staff recommendation, 8-foot solid screening walls on the south and east sides, site plan approval, and no audio devices or menu board with drive-thru.

**ALDRICH** moved, **JOHNSON** seconded the motion, and it carried (10-0).

7. **Case No.: ZON2012-15** - Waterfront Holding Co., LLC (Owner) and MKEC c/o Brian Lindebak (Agent) request a City zone change request from LI Limited Industrial to GO General Office on property described as:

Part of Section 9, Township 27, Range 2 East of the 6th P.M. beginning 40 feet North of the Southeast corner of the Southwest Quarter, thence West 51.54 feet, thence North 200 feet, thence West 98.68 feet, thence North 265 feet, thence West 924.52 feet, thence Northwest 378.22 feet to the East line of Waterfront Parkway, thence Northeast 554.26 feet to a curve, thence Northwesterly along the curve 1,022.85 feet, thence Northwest 308.53 feet, thence Northeast 113.12 feet, thence North 289.69 feet to the South line of the railroad right of way, thence East 1,713.31 feet to the East line of the Southwest Quarter, thence South to the beginning, except Waterfront 2nd Addition and except Waterfront 4th Addition and except Waterfront 5th Addition and except Waterfront 6th Addition.

**BACKGROUND:** The applicants request a zone change from the existing LI Limited Industrial (“LI”) to GO General Office (“GO”) zoning on a 25-acre unplatted and undeveloped property. The existing LI zoning prohibits residential development, the applicant wants the flexibility to do residential development and the other uses permitted in the GO district. This request is a downzoning, therefore permitted uses, signage and other development controls will be more restrictive under the requested zoning than they are presently.

Property north of this site, across an unused rail corridor, is zoned SF-5 Single-family Residential (“SF-5”) and developed with homes. South and west of the site is LI zoning with office and commercial uses. East of the site are SF-5 zoned lots, most of which are vacant, with a few built homes.

**CASE HISTORY:** The site is unplatted and undeveloped.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Single-family residences
SOUTH:	LI	Platted reserve, hotel, vacant commercial land
EAST:	SF-5	Vacant, single-family residences
WEST:	LI	Offices

**PUBLIC SERVICES:** The subject property has frontage along Waterfront Parkway, a paved two-lane local commercial street with a 100-foot right-of-way, including a landscaped center median.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Local Commercial” use. Local Commercial is designated for concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw.

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

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property north of this site, across an unused rail corridor, is zoned SF-5 and developed with homes. South and west of the site is LI zoning with office and commercial uses. East of the site are SF-5 zoned lots, most of which are vacant, with a few built homes.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be developed with a variety of commercial, office and industrial uses under the current LI zoning. However, residential development is not permitted under the current LI zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the request would not remove restrictions, but would permit only those uses allowed in the GO zone. GO uses will have limited impacts on surrounding properties when compared to the impacts that LI uses could have on the surrounding properties.
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 “Local Commercial” use. Local Commercial is designated for concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw.
5. **Impact of the proposed development on community facilities:** Development of this site will increase traffic on Waterfront Parkway. However, the intensity of traffic demand and size of vehicles would be greater if the property were developed under the existing LI zoning.

JESS MCNEELY, Planning Staff presented the Staff Report.

COMMISSIONER FOSTER recused himself from the item.

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

JOHNSON moved, DENNIS seconded the motion, and it carried (9-0-1). FOSTER – abstained.

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8. **Case No.: CON2012-17** – Douglas Ternes (Owner/Applicant) requests a County Conditional Use request for mining or quarrying on property on property described as:

The West half of the Southwest quarter of Section 25, Township 27, Range 3 West of the 6th P.M., Sedgwick County, Kansas, except that portion condemned for highway in district court case B-17272.

**BACKGROUND:** The owner of the unplatted 20-acre site located north of US 54 and east of 231<sup>st</sup> Street West seeks a Conditional Use to allow “mining/quarrying.” The applicant proposes to enlarge an existing pond on the subject site, and to haul the extracted material off the site. The site is currently zoned RR Rural Residential (“RR”). “Mining or quarrying” is permitted in the RR district with an approved Conditional Use. The larger 74-acre site, under the same ownership as the applicant, is currently used for agriculture and has improvements such as outbuildings and a silo.

The applicant's site plan establishes a limit of excavation line at approximately 960 feet from the south property line, along US 54, and approximately 400 feet from the west property line, along 231<sup>st</sup> Street West. The site has one access point from 231<sup>st</sup> Street West on the northwest corner of the site.

All property surrounding the site is zoned RR. Property to the north, east and west is used for agricultural purposes/farmland. One residence exists southwest of the site, at the northwest corner of 231<sup>st</sup> Street West and US 54. Several residences exist south of the site, south of US 54. A Corridor Protective Overlay (CP-O) District exists south of the proposed Conditional Use site. The application area is within the Goddard Zoning Area of Influence, and is within ¼ mile of the Goddard City Limit.

**CASE HISTORY:** The property is zoned RR and is unplatted.

**ADJACENT ZONING AND LAND USE:**

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

**PUBLIC SERVICES:** No water or sewer service is available at the site. 231<sup>st</sup> Street West is an unpaved section-line road with a 40-foot right-of-way at the subject site.

**CONFORMANCE TO PLANS/POLICIES:** The property is shown on the Wichita and Small Cities 2030 Urban Growth Areas map as being within the Goddard growth area, with property to the west, across 231<sup>st</sup> Street West, designated as "rural." Rural areas are located outside the 2030 urban growth area for Wichita and the small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County.

The Unified Zoning Code (UZY) has 23 supplementary conditions for the Mining and Quarrying Conditional Use. This application and site plan appear to meet those requirements.

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

1. The extraction operation on the site shall be in accordance with a site plan approved by the Planning Commission and Planning Staff. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved plan.
2. The only permitted use after excavation is a pond for the property owners.
3. Equipment on the site shall not project noise and/or light onto any surrounding properties which exceeds the noise and/or light spillage limits of existing County codes or compatibility standards.
4. Adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.

5. The extraction shall be to at least a minimum depth of six feet below the normal water table, as determined by the Director of Sedgwick County Code Enforcement.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.
8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
9. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.
10. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
11. The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line.
12. Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. The Conditional Use for the sand extraction operation shall be valid for a period of five years. The applicant may apply to the Planning Director for an additional two years by an administrative adjustment.
15. All on-site water and sewage facilities shall be approved by and constructed to Sedgwick County standards.
16. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for the installation and management of groundwater monitoring wells if required.
17. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire Department.

18. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the area of the site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drainage plan.
19. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.
20. All other applicable local, state, and federal permits necessary for the extraction operation shall be obtained and maintained.
21. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
22. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

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

1. **The zoning, uses and character of the neighborhood:** All property surrounding the site is zoned RR. Property to the north, east and west is used for agricultural purposes/farmland. One residence exists southwest of the site, at the northwest corner of 231<sup>st</sup> Street West and US 54. Several residences exist south of the site, south of US 54. A Corridor Protective Overlay (CP-O) District exists south of the proposed Conditional Use site. The application area is within the Goddard Zoning Area of Influence, and is within ¼ mile of the Goddard City Limit.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned RR Rural Residential, which permits primarily large-lot residential and agricultural uses by-right. The site can continue to be used under the current zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the requested Conditional Use will introduce a use not currently found in the immediate area. An increase in truck traffic, soil erosion and blowing dust are possible. However, the limited scale of the proposed excavation and the proposed conditions of approval mitigate anticipated negative effects on nearby property.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The property is shown on the Wichita and Small Cities 2030 Urban Growth Areas map as being within the Goddard growth area, with property to the west, across 231<sup>st</sup> Street West, designated as "rural." Rural areas are located outside the 2030 urban growth area for Wichita and the small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County.

5. **Impact of the proposed development on community facilities:** The primary impact of the proposed use is a minimal increase in truck traffic, which can be handled by current roadways.

JESS MCNEELY, Planning Staff presented the Staff Report.

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

JOHNSON moved, DENNIS seconded the motion, and it carried (10-0)

9. **Case No.: CON2012-18** - the City of Wichita (property owner) and Professional Engineering Consultants, P.A. (Sarah Unruh) request a County Conditional Use request for a utility, booster pump for Rural Water on RR Rural Residential zoned property on property described as:

A tract of land in the Northeast Quarter of Section 20, Township 26 South, Range 2 East of the 6th Principle Meridian, Sedgwick County Kansas described as:

Commencing at the Northeast corner, of the Northeast Quarter of Section 20, Township 26 South, Range 2 East of the 6th Principle Meridian, Sedgwick County Kansas; thence bearing S89°08'20"W along the North line of said Northeast Quarter a distance of 602.00 feet to the Point of Beginning; thence bearing S00°51'40"E, a distance of 219.00 feet; thence bearing S89°08'20"W, a distance of 108.00 feet; thence bearing N00°51'40"W, a distance of 219.00 feet to a point on the North line of said Northeast Quarter; thence bearing N89°08'20"E, along the North line of the Northeast Quarter a distance of 108.00 feet to the Point of Beginning.

**BACKGROUND:** The applicant is seeking Conditional Use approval for a water booster pump station this is classified by the Unified Zoning Code as a "utility, major." The proposed water booster station is to be located on .54 acre located on the south side of East 53<sup>rd</sup> Street North, 675 feet west of North Webb Road. The property is zoned RR Rural Residential ("RR"), and is vacant. The .54 acre application area was part of a larger (8.85 acres) tract owned by James and Narnie Woolley but was recently sold to the City of Wichita. The Woolley's ownership is farmed except for a small building located south of the application area. The applicant's agent indicates the proposed booster pump station will allow Sedgwick County Rural Water District No.1 ("R.W.D. No. 1") to meet needed pressure and residual chlorine requirements within the R.W. D. No. 1's water distribution system. Rural Water District No. 1 obtains its water from the City of Wichita. The subject location was selected, in part, because a connection between R.W.D. No. 1's distribution lines and the City of Wichita's water network is located just north of the northwest corner of 53<sup>rd</sup> Street North and Webb Road, and the property was available for purchase.

The district proposes to construct a building (approximately 22 feet by 29 feet in size) that will contain pumps, electrical equipment, disinfection equipment, and a small laboratory. A septic tank and lateral field will be installed to dispose of waste flow from the laboratory sink. The site size is 108 feet by 189 feet. Building setbacks of 30 feet (front), 20 feet on the sides (east and west) and 25 feet (south) are shown on the site plan. The proposed structure, parking area and septic tank will be enclosed by a six-foot chain link fence with three strands of barbed wire on the top. Access to the site is off of 53<sup>rd</sup> Street, which is a paved two-lane section-line road.

The application area is surrounded on three sides - east, south and west - by the Woolley's larger ownership. The land contiguous to the application area is zoned RR. The land to the north is located within Bel Aire, is subject to Bel Aire's zoning and subdivision regulations, and is used for farm land.

All of the Woolley's larger ownership is located in Sedgwick County but is surrounded by land annexed into the City of Bel Aire that is subject to Bel Aire's zoning and platting regulations. All land within one-quarter mile of the application area is used for agricultural purposes. It does not appear that there are any existing residences within one-quarter mile of the site.

The *Wichita-Sedgwick County Unified Zoning Code (UZC)* defines a "utility, major," as generating plants, electrical switching facilities and primary substations, water and wastewater treatment plants, water tanks and similar facilities of agencies that are under public franchise or ownership to provide the general public with water or similar services in structures exceeding 150 cubic feet. A major utility requires a Conditional Use in all zoning districts except the AFBP-O Air Force Base Protection Overlay district.

**CASE HISTORY:** On March 14, 2012, the Sedgwick County Board of Zoning Appeals (BZA) approved a variance to allow a reduction in the minimum lot width and minimum lot area. The County BZA approved a lot width of 108 feet and a lot size of .54 acre for a booster pump station only.

**ADJACENT ZONING AND LAND USE:**

NORTH: Bel Aire zoning; farm land  
SOUTH: RR; farm land  
EAST: RR; farm land  
WEST: RR; farm land

**PUBLIC SERVICES:** Rural water service is available. 53<sup>rd</sup> Street is a paved two-lane section-line road with 30 feet of half-street right-of-way. Bel Aire's *Comprehensive Development Plan 1994-2010* depicts 53<sup>rd</sup> Street as "major collector (rural)." Planning staff has been advised by the applicant's agent that County Public Works has asked for a sixty-foot front building setback from the center-line of 53<sup>rd</sup> Street. The proposed setback would allow for easier widening of 53<sup>rd</sup> Street to occur in the future. The applicant's site plan depicts the requested setback.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map indicates this site is located within Bel Aire's 2030 Urban Growth Area. The Urban Growth Area is defined as land that can potentially be served by public services and be available for urban scale development by the year 2030. Transportation/Utilities Locational Guideline number 2 states that utility facilities with significant noise, odor and other nuisance elements should be located away from residential areas. The facility should not produce any discernable noise, odor or other nuisance elements.

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

1. The Conditional Use permits a "utility, major" limited to a water booster pump station and related facilities as shown on the approved site plan. A site plan, as approved by the MAPC or the County Commission shall be submitted for review and consideration for approval within one year of final approval. The site and the booster pump station and related improvements shall be developed, operated and maintained in substantial compliance with the approved site plan, and all applicable local, state or federal regulations.

2. Improvements authorized by this Conditional Use shall be completed within a year of final approval by the MAPC or the County Commission.
3. 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.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is surrounded on three sides –east, south and west – by farm land that is zoned RR; and is owned by the individuals that sold the subject property to the City of Wichita. Land located further east, south and west is used for farm land, is located within the City of Bel Aire, and is subject to Bel Aire’s zoning and subdivision regulations. The land located to the north, across East 53<sup>rd</sup> Street, is also used for farm land but has been annexed to the City of Bel Aire and is subject to Bel Aire’s zoning and subdivision regulations. The use of adjacent and contiguous land for farmland gives the area a rural feel; however, platted subdivisions located within the City of Bel Aire are located 1,964 feet to the west and 2,432 feet to the south.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned RR, which primarily permits, by right, single-family residences, agriculture and a few non-residential uses such as a park or utility, minor on lots with a minimum lot size of two acres. The site has received a variance for a minimum lot size of .54 acre for only a booster pump station. The site is unusable for other uses without adding acreage to meet zoning minimum area requirements.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the Conditional Use will not change the base zoning. The only additional use permitted would be the booster pump station. The proposed conditions of approval should prevent any anticipated detrimentally impacts. The booster pump station will not threaten the continued use of nearby agricultural activities nor inhibit the future development of more intense uses on surrounding land as the City of Bel Aire grows eastward.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request will allow Rural Water District No. 1 to enhance its delivery of potable water to its customers. Denial would force the applicant to find an alternate site and would presumably represent an economic and efficiency loss.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map indicates this site is located within Bel Aire’s 2030 Urban Growth Area. The Urban Growth Area is defined as land that can potentially be served by public services and be available for urban scale development by the year 2030. Transportation/Utilities Locational Guideline number 2 states that utility facilities with significant noise, odor and other nuisance elements should be located away from residential areas. The facility should not produce any discernable noise, odor or other nuisance elements.
6. Impact of the proposed development on community facilities: Approval will enhance the delivery of water to Rural Water District No. 1’s customers.

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

**FOSTER** asked for clarification about the 60-foot setback and 30- and 60-foot right-of-ways.

**SARAH UNRUH, PEC ENGINEERING CONSULTANTS, P.A.** responded that there was currently an existing 30-foot easement or right-of-way which County Engineering required them to expand to 60 feet to accommodate the possibility of widening the approach to Webb Road.

**FOSTER** clarified then it would be a 30-foot dedication.

**ALDRICH** asked if the existing building was encroaching on the right-of-way.

**UNRUH** briefly reviewed the application saying that it was for a water booster pump station for the rural water district. She commented that the City of Wichita's line runs down 53<sup>rd</sup> Street. She said the district needs the ability to boost their chlorine residual and pressure to the farthest point of their system. In response to **COMMISSIONER ALDRICH's** question she said there is a tin shed on property 10 feet west of what they have purchased for the booster site.

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

**SHEETS** moved, **KLAUSMEYER** seconded the motion, and it carried (9-0-1).  
**JOHNSON** – Abstained.

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- 10. Case No.: CON2012-19** – Chad and Lori Leonard (owners) request a County Conditional Use request for mining and quarrying on RR Rural Residential zoned property on property described as:

The E. 785.75' of the West 1,811.33' of the North 630.00' of the NW 1/4, EXC. Road R/W, Sec. 22-28-2W

**BACKGROUND:** The applicants request a Conditional Use to allow "Mining and Quarrying" for the excavation of fill material on the RR Rural Residential ("RR") zoned site. The fill material will be used on construction projects. The applicants propose a 6.27-acre pond on the 11.36-acre RR zoned undeveloped tract. The 11.36-acre site is part of the applicants' 65-acre property located on the southeast corner of 47<sup>th</sup> Street South and 167<sup>th</sup> Street West. The pond is designed to retain water and will ultimately be developed with a future home site. The applicants intend to excavate to a maximum depth of approximately 15 feet on the east side and 20 feet on the west side or to excavate for 5-years, whichever comes first. Proposed access to the site is off of 47<sup>th</sup> Street South approximately 1,000 feet east of 167<sup>th</sup> Street West. Both 47<sup>th</sup> and 167<sup>th</sup> are sand and gravel section line roads. State Highway K-42, the nearest paved road, is located approximately ¾-mile southeast of the site.

As with any excavation, erosion and sediment run off is a possibility. The applicant will have to work with the responsible entities (USDA, KDHE, KDWP, etc.) to mitigate any negative impacts and to acquire the proper permits for the excavation operation.

The site is located on the outmost west edge of the 5-mile perimeter of the Hazardous Wildlife Attractions Overlay District of Wichita Mid-Continent Airport. If the site was located immediately to

the west it would be outside the Overlay District. Staff has advised Mid-Continent Airport staff regarding the application. Planning staff expects to know the Airport's position prior to the MAPC meeting, in regards to compliance with the Federal Aviation Administration Office (FAA) Advisory Circulars AC150/5200-33B titled *Hazardous Wildlife Attractants on or near Airports*. Because the airport receives money from the federal government, it is required to comply with FAA regulations. The Airport staff is open to working with the applicants in dealing with this issue including design features such as steep slopes, use of rock and other design features to make the site uncomfortable for birds.

The RR zoned site is located in unincorporated Sedgwick County, surrounded by RR zoned agricultural lands, farmsteads and large tract single-family residences. The large lot (+/- one-acre) K-42 Estates subdivision is located approximately ½-mile south of the pond site. The site and much of the surrounding area is located within a FEMA AH, AE, AO, A, Flood Zone.

**CASE HISTORY:** The property is currently unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	Agricultural land, farmstead
SOUTH:	RR	Agricultural land, large tract and large lot single-family subdivision
EAST:	RR	Agricultural land, large tract single-family residences
WEST:	RR	Agricultural land

**PUBLIC SERVICES:** The proposed access drive to the subject site is located along 47<sup>th</sup> Street South, a sand and gravel, section line, Illinois Township road. The existing half-width right of way on this section of 47<sup>th</sup> is 25 feet. There are no traffic counts for this stretch of 47<sup>th</sup>. The applicant is proposing one drive entrance off of 47<sup>th</sup> Street.

**CONFORMANCE TO PLANS/POLICIES:** The Comprehensive Plan identifies this property as Urban Development Mix and located within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure are expected to be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors. The site is also located just outside of the City of Goddard's Area of Zoning Influence.

The Unified Zoning Code lists "Mining or Quarrying" as a possible Conditional Use in the RR zoning district. The Zoning Code lists 23 conditions with which Mining or Quarrying should comply; these conditions exist for public safety, and to mitigate any negative effects the extraction may have on surrounding properties. Not all of these conditions are applicable to the proposed fill material

excavation. If the Planning Commission recommends modifications to one or more of the Unified Zoning Code conditions for the requested Conditional Use, the request will then be forwarded to the Governing Body for final action.

**RECOMMENDATION:** With the proper conditions in place, this proposal should not have a detrimental impact on the surrounding properties, as they are developed with agriculture, or well screened by existing natural vegetation. If any the possible public safety issues involved with the possible attraction of migrating birds and its vicinity near the airport and the consequences the airport and the City of Wichita may face if federal funding is affected by the proposal, staff recommends that the Conditional Use request be **APPROVED** with the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted on the site. Excavation will be at a maximum depth, at a slope as reviewed and approved by all local, state and federal agencies, including the FAA or for 5 years, whichever comes first.
2. The excavation operation will have to abide by the rules and design set forth in the Federal Aviation Administration Advisory Circular 150/5300-33B "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.
3. The operational plan shall illustrate which area is to be excavated and in what phase.
4. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
5. As approved by the County Engineer, adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.

9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
10. The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line. The pond shall not extend into the setback established by 47th Street South, a section line road.
11. Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to 6:00 p.m.
14. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire.
15. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. The extraction area shall be developed so as to not become a wetland area.
16. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.
17. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The RR zoned area is located within unincorporated, rural Sedgwick County. Agricultural lands, farmsteads and large tract single-family residences are the most common uses of the area. The large lot (+/- one-acre) K-42 Estates subdivision is located approximately ½-mile south of the pond site. Most of the site and much of the surrounding area is located within a FEMA AH, AE, AO, A, Flood Zone.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be used for the uses permitted by its current zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The site is located on the outmost west edge of the 5-mile perimeter of the Hazardous Wildlife Attractions Overlay District of Wichita Mid-Continent Airport. If the site was located immediately to the west it would be outside the Overlay District. There is the potential that federal funding for the airport could be affected by this request as the city is responsible for operating the runway in compliance with FAA regulations. The airport has stated that there are ways to design an excavation area that would help to mitigate the potential hazard, but at this time, the application is still being considered

by Mid-Continent Airport. The recommended conditions of approval will mitigate anticipated impact.

4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Comprehensive Plan identifies this property as Urban Development Mix within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.
5. **Impact of the proposed development on community facilities:** Traffic to and from the requested Conditional Use at this location will increase the daily trips on this section of 47<sup>th</sup> Street South. Illinois Township maintains this section of 47<sup>th</sup> Street South.

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

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

**JOHNSON** moved, **DENNIS** seconded the motion, and it carried (10-0)

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11. **Case No.: CON2012-20** – Dennis and Julie Rhoads request a County Conditional Use request for an Accessory Apartment on RR Rural Residential Zoned property on property described as:

A Tract of land lying in the Northwest Quarter of Section 5, Township 29 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas: Beginning at the West quarter corner of Sec. 5, thence going northerly along the west side of said quarter of Sec. 5, a distance of 1100 feet; thence turning right and going easterly parallel to the Half section line a distance of 396 feet, thence turning right and going Southerly Parallel to the West section line a distance of 1100 feet to the half section line, thence turning right and going Westerly on the half section line a distance of 396 feet to the point of Beginning.

**BACKGROUND:** The applicants are seeking Conditional Use approval to permit an “accessory apartment” on 8.737 unplatted acres zoned RR Rural Residential (“RR”) located approximately 1,600 feet south of West 71<sup>st</sup> Street South, east of South 103<sup>rd</sup> Street West (7500 South Maize Road). If approved, the property will remain zoned RR; the zoning does not change with the requested Conditional Use. The following information is taken from the applicant's attached site plan. The property is currently developed with a 1,456 square-foot single-family home. The applicants propose to construct a second site-built single-family home located approximately 250 feet south of the existing

home and 150 feet east of 103<sup>rd</sup> Street West. The proposed new single-family structure will become the principal structure since it is proposed to be the larger of the two homes, with the existing home becoming the accessory structure. The applicants are still working out the exact size of the new single-family residence.

Access to the site is provided off of 103<sup>rd</sup> Street West by a driveway located very near the northwestern corner of the property. An existing lagoon is located in the northern- quarter of the property, uphill from the proposed location of the second home. The applicant is seeking approval to have an additional water well to provide water service to the new single-family home, and possibly a second lagoon, septic tank or other sanitary sewer solution (see the paragraph below regarding water and sanitary sewer standards). The site is heavily wooded, particularly along its western and southern property lines, making it difficult to see much of the interior portions of the site from 103<sup>rd</sup> Street. The southwest corner of the site is encumbered by a floodway reserve agreement (recorded on film 416, page 22). The proposed accessory apartment is proposed to be located outside of the floodway reserve.

The *Wichita-Sedgwick County Unified Zoning Code (UZC)* defines an “accessory apartment” as an accessory use dwelling unit that may be wholly within, or may be detached from, a principal single-family dwelling unit. Accessory apartments are subject to the following Supplementary Use Regulations detailed in Article III, Section III-D.6.a: 1) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling unit and may be within the main building, within an accessory building or constructed as an accessory building; 2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; 3) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit and the ownership shall not be divided or sold as a condominium; 4) the water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling. Electric, gas, telephone, and cable television utility service may be provided as separate utility services.

As noted above, the applicants are asking for a waiver of Supplementary Use Regulation 6.a.4) that requires both the principal and the accessory apartment to share the same water and sanitary sewer service. Article V, Section V-D.6. states that the action of the MAPC shall be final on a Conditional Use application except when one or more of six circumstances exist; one of which is if the Planning Commission recommends modification of one or more of the conditions found in Section III-D.6, Supplementary Use Regulations. If a request has been made to waive one of the Supplementary Use Regulations then the application is to be forwarded to the governing body for final action. Therefore, if the MAPC recommends waiver of the requirement to share water and sewer service, the case will be forwarded to the Board of County Commissioners for final action. The reason the code requires the same sanitary sewer and water service for both structures is to minimize the risk one of the homes will be sold off separately.

All surrounding property is zoned RR. Land to the north and east is farmland. Property to the south is developed with a Girl Scout campground. Land to the west is developed with a multitude of large-lot single-family residences; some with site-built structures, others with manufactured homes.

**CASE HISTORY:** The RR zoning was probably assigned in 1985 when county-wide zoning was adopted.

**ADJACENT ZONING AND LAND USE:**

NORTH: RR; farmland  
SOUTH: RR; Girl Scout campground  
EAST: RR; farmland  
WEST: RR; large-lot residential

**PUBLIC SERVICES:** Along the 103<sup>rd</sup> Street frontage of the subject tract there is 50 feet of half-street right-of-way. Sewer and water services are provided on-site.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide, Map as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area to be appropriate as “Rural Areas.” The purpose of this category is “to accommodate agricultural uses and rural based uses that are not more offensive than those agricultural uses commonly found in Sedgwick County.” The site lies beyond the identified “Small City 2030 Urban Growth Area” for Clearwater.

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

1. The accessory apartment structure shall be limited to one single-family residential unit and shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC) for accessory apartments, except Supplementary Use Regulation 4 requiring both units to have the same water and sanitary sewer service shall be waived.
2. The site will be generally developed as shown on an approved site plan. Construction of the accessory apartment shall not begin without first obtaining all applicable permits, including but not limited to building, health, sanitation and zoning, and shall be maintained in general conformance with the approved site plan.
3. 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: The application area is surrounded by property that is zoned RR and developed with large-lot single-family residences, Girl Scout campground or farmland.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned RR which primarily permits single-family residential, manufactured home, group home and a few non-residential uses such as a golf course, park or agriculture uses are permitted by right. The site is in use today as currently zoned, and could continue to be economically viable as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby property provided the site is developed and maintained in conformance with the recommended conditions of approval.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial presumably would represent a hardship to the applicant in that they would increase the value of the property with the construction of an additional structure. The public's health and safety should not be compromised if the request is approved.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide, Map as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area to be appropriate as "Rural Areas." The purpose of this category is "to accommodate agricultural uses and rural based uses that are not more offensive than those agricultural uses commonly found in Sedgwick County." The site lies beyond the identified "Small City 2030 Urban Growth Area" for Clearwater. The UZC permits an accessory apartment in the RR district with Conditional Use approval.
6. Impact of the proposed development on community facilities: Existing improvements are in place or can be provided to accommodate the proposed development.

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

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

**JOHNSON** moved, **DENNIS** seconded the motion, and it carried (10-0).

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12. **Case No.: CON2012-21** – Nordyke Ventures, c/o Mark Nordyke (owner) and David and Charlie Baldeen (applicants) request a City Conditional Use request for a nightclub in the city on property zoned LC Limited Commercial on property described as:

The South 248.58' of the West 232.11' of Lot 1, Block 3, Reflection Ridge 3<sup>rd</sup> Addition, Wichita, Sedgwick County, Kansas AND That part of Lot 1 beginning at the northwest corner; thence South 271.41'; thence East 228.79'; thence North to the North line; thence Northwesterly to beginning, Block 3, Reflection Ridge 3<sup>rd</sup> Addition, Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicants are requesting a Conditional Use for a "Nightclub in the City," located in a full service restaurant (DER), located on the north side of 21<sup>st</sup> Street North and east of Tyler Road. A DER limits its liquor sales to 50% or less of the total sales. A nightclub allows unlimited liquor sales, regardless of whether or not there are food sales. The applicant proposes to provide unlimited liquor sales, live or DJ music for dancing for patrons and karaoke; a nightclub in the city: Sec.II-B, 9(b) of the Unified Zoning Code (UZC). Nightclubs are a permitted use in the LC Limited Commercial zoning district, but require a Conditional Use when located within 300 feet of "Church or a Place of Worship," public "Park," "School," or residential zoning: Sec.III-D(w) of the UZC. The site abuts a finger of a SF-5 Single-Family Residential ("SF-5") zoned private golf course, thus the requested Conditional Use.

The proposed nightclub is one of several tenants in a 10,500-square foot strip retail building, located on a portion of the LC zoned Lot 1, Block 3, Reflection Ridge 3<sup>rd</sup> Addition. Another LC zoned retail strip shares the same lot and is located north of the site. A SF-5 Single-Family Residential ("SF-5") zoned private golf course abuts the north side of the site's lot. A SF-5 zoned subdivision(s) is built around the

golf course. LC zoned medical and dental use abut the east side of the site. An LC and GC General Commercial (“GC”) zoned travel agency that offers chartered bus trips, abuts the west side of the site, with LC zoned strip retail located just east of the travel agency. There appear to be several full service restaurants in the area, but this may be the first nightclub in the area.

The applicant’s site plan shows the portion of the strip retail building the restaurant now occupies and where the nightclub will be located. It also shows the 80 available parking spaces. At this time the occupancy rating is not known for the space the proposed nightclub will occupy. The applicants’ site plan does not show the existing outdoor ‘patio’ area, with its chairs and tables, located along the north side of the building. The UZC requires one parking space for two occupants for either a nightclub or a restaurant; see BZA2007-29 below.

**CASE HISTORY:** The site is located on Lot 1, Block 3, of the Reflection Ridge 3<sup>rd</sup> Addition, which was recorded with the Register of Deeds March 13, 1989. In 1999 CU-523 permitted a driving range (outdoor entertainment) for 6-months. BZA2007-29 reduced the required parking spaces for a restaurant by 25%, from 123 parking spaces to 92 spaces.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, SF-5	Retail strip, private golf course, single-family residential
SOUTH:	LC	Retail, fast food restaurants, a restaurant, a car wash
EAST:	LC, SF-5	Medical and dental services, private golf course
WEST:	LC, GC	Travel agency with buses, strip retail

**PUBLIC SERVICES:** The site has two drives onto 21<sup>st</sup> Street North, one of which is a joint drive for the east, abutting medical services. 21<sup>st</sup> is a major arterial street at this location, with four lanes, a center turn lane and outside turn lanes. The current traffic volume along this portion of 21<sup>st</sup> is approximately 31,074 vehicles per day. The site also has access to Reflection Road, a residential street. Staff has received calls from residents in the neighborhood expressing concerns about the nightclub patrons using this street. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The *2030 Wichita Functional Land Use Guide* depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed nightclub is located within an existing commercial development, with direct access onto the 21<sup>st</sup> Street North arterial. Existing commercial buildings are adjacent to its north, west and east sides. The adjacent north commercial building is located between the nightclub building and the adjacent residential neighborhood, thus offering some screening. The abutting golf course has a berm and trees along its common property line with the subject property, thus offering some screening and buffering. The Comprehensive Plan Objective II.B. is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.”

The Unified Zoning Code requires a Conditional Use for a nightclub when it is located within 300 feet of a church or a place of worship, Public Park, school, or residential zoning. The site is not currently permitted for entertainment, including dancing for patrons. Approval of a Conditional Use for a nightclub would introduce live entertainment, or music by a DJ, dancing by patrons, and unlimited alcohol sales on this site. If approved, this may be the first nightclub in the area.

**RECOMMENDATION:** Introduction of a nightclub at this site may be introducing a new use into the area. The proposed nightclub site is currently a restaurant/drinking establishment (DER license), which limits its liquor sales to 50% of the total sales. The applicant is now requesting a Conditional Use for a nightclub, which allows unlimited liquor sales, regardless of whether or not there are food sales. The Conditional Use would also allow dancing, live music or music provided by a DJ. Because of the site's proximity to the single-family residences, a key consideration would be prohibiting outside loud speakers and all entertainment. A finger of a private golf course provides approximately 380 feet of separation and buffer from the nightclub site to the nearest single-family residence. A retail strip building is also located between the nightclub building and the residential neighborhood, offering some screening. The question of available parking must be resolved and if the required parking is not available the applicant can seek resolution through either an Administrative Adjustment or a Variance. Therefore based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, with the following conditions:

- (1) No outside loudspeakers or entertainment, including dancing.
- (2) A revised site plan will be provided showing, but not limited to, existing screening, landscaping and parking. If the required parking is not available the applicant must apply for an Administrative Adjustment or a Variance to resolve the issue. The nightclub shall be located in the building shown on the approved site plan.
- (3) 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 that the Conditional Use is null and void.

**This recommendation is based on the following findings:**

1. **The zoning, uses and character of the neighborhood:** The proposed nightclub is one of several tenants in a 10,500-square foot retail center, located on a portion of the LC zoned Lot 1, Block 3, Reflection Ridge 3<sup>rd</sup> Addition. Another LC zoned retail strip shares the same lot, and is located north of the site. A SF-5 Single-Family Residential ("SF-5") zoned private golf course abuts the north side of the site's lot. A SF-5 zoned subdivision(s) is built around the golf course. LC zoned medical and dental abut the east side of the site. An LC and GC General Commercial ("GC") zoned travel agency that offers chartered bus trips, abuts the west side of the site, with LC zoned strip retail located just east of the travel agency. There appear to be several full service restaurants in the area, but this may be the first nightclub in the area.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC, which accommodates office and retail uses, including a DER, the site's current use.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The unlimited liquor sales, the noise from the music and dancing, the hours of the nightclub and its parking all could have a detrimental impact on the adjacent SF-5 zoned residences. The conditions of the Conditional Use are intended to minimize the negative impact.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Land Use Guide of the Comprehensive Plan identifies the site and the area as appropriate for “Local Serving Commercial” development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed nightclub is located within an existing commercial development, with direct access onto the arterial 21<sup>st</sup> Street North. Existing commercial buildings are adjacent to its north, west and east sides. The adjacent north commercial building is located between the nightclub building and the adjacent residential neighborhood, thus offering some screening. The abutting golf course has a berm and trees along its common property line with the subject property, thus offering some screening and buffering. The Comprehensive Plan does not contain guidelines specifically for nightclubs, drinking establishments or taverns. However, the Plan does have an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments. The conditions of Conditional Use are an attempt to realize much of this objective of the Plan.
5. **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for police services.

**BILL LONGNECKER**, Planning Staff presented the Staff Report. He reported that the case is scheduled to be heard by DAB V on Monday, June 4, 2012, which he noted was after the 2-week protest period. He said protests would need to be filed prior to the June 4 DAB meeting to be valid. He concluded by saying that if the applicant needs to do a variance on the parking they will have to go through a public hearing with the Board of Zoning Appeals.

**ALDRICH** said he was concerned about parking and asked if staff had heard from surrounding business owners at the site.

**LONGNECKER** said no and indicated that he has heard from residential property owners around Reflection Ridge Golf Course.

**SHEETS** indicated that was a golf cart path north of the site not a through road.

**LONGNECKER** said there is a drive from the site out onto Reflection Road south of one of the buildings on the east side of the site.

**G. SHERMAN** said according to staff recommendation, there is nothing to keep the applicant from making the entire 10,000 square feet a nightclub. He asked about a condition to limit the size of the nightclub to the existing Dudley’s Restaurant.

**LONGNECKER** said that is how the parking requirement was figured, based on the 150 seats at Dudley’s Restaurant. He referred condition #2 in the Staff Report and said they could provide additional verbiage to limit the size to the current restaurant.

**FARNEY** asked about any cross lot agreements.

**LONGNECKER** mentioned shared drives and that there were no barriers to going through the parking lot.

**FARNEY** asked if this case was a result of OCI enforcement.

**LONGNECKER** responded no.

**SHERMAN** clarified that Via Christi could not chain off their parking lot at night if they wanted to.

**LONGNECKER** said he was not sure. He said the previous parking adjustment on this site did not include Via Christi.

**CHARLES BALDEEN, 6015 JACQUELINE, APPLICANT** introduced himself.

**FARNEY** asked if he was in agreement with staff recommendations.

**BALDEEN** indicated there were an extra 25 parking spaces on the north of the site that were not included in the site plan. He said their building and the building to the north are all owned by the same person and he has told them it is one big parking lot not marked for specific businesses. He clarified that this is a restaurant not a nightclub. He said they are trying to get karaoke 2 nights a week; no dancing and no outdoor speakers. He said they had birthday party where they brought in a clown and he was told he should have had an entertainment license for the clown.

**FOSTER** clarified that their lease agreement grants them access to all parking on site.

**BALDEEN** said yes all the parking in the general area. He said they have always overflowed onto the Via Christie lot, but they do not have a written agreement with them only a verbal agreement. He said they keep the Via Christie lot picked up.

**SHEETS** clarified that they are currently operating at this location and are not concerned about parking. He said what they are looking for is the right to have live entertainment and karaoke.

**BALDEEN** said that is correct.

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

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

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13. **Case No.: CON2012-22** – Payne Township c/o Gerald Andrews (owner/applicant) requests a County Conditional Use request for a township equipment and storage yard with meeting room (governmental service) on property described as:

The Southeast Quarter of Section 3, Township 26, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas except, beginning at the Southeast corner, thence North 2,647.11 feet, thence

West 1,317.57 feet, thence South 2,069.05 feet, thence West 592.39 feet, thence South 591 feet, thence East 1,915.38 feet to beginning.

**BACKGROUND:** The Township of Payne, owner of the unplatted 20-acre site located north of East 69<sup>th</sup> Street North and west of North 127<sup>th</sup> Street East, seeks a Conditional Use to allow a Government Service facility. The site is zoned RR Rural Residential (“RR”); Government Service facilities are permitted in the RR district with an approved Conditional Use. The Township’s current facility at 5053 North 143<sup>rd</sup> Street East is leased on a short term basis; the Township purchased the subject property from the County.

The applicant proposes office, storage and maintenance facilities on the site for the storage and maintenance of township equipment, see the attached site plan. The township currently owns two dump trucks, a backhoe, a front loader, a grader and a tractor. They plan on an above ground fuel storage tank, and storage of oil, antifreeze, and other chemicals indoors. The township has one employee, and intends to hold board meetings on the site. With minimal water use on the site, the applicant plans to use an advanced septic system, pending County Code approval.

All property surrounding the site is zoned RR. Property to the north, east and west is used for agricultural purposes/farmland. Nine 10-acre or larger residential properties exist on the south side of 69<sup>th</sup> Street north, between Greenwich and 127<sup>th</sup> Street East.

**CASE HISTORY:** The property is zoned RR and is unplatted.

**ADJACENT ZONING AND LAND USE:**

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

**PUBLIC SERVICES:** The property is within Rural Water District #1. Sewer service will be on-site. 69<sup>th</sup> Street North is an unpaved section-line road with a 50-foot right-of-way at the subject site.

**CONFORMANCE TO PLANS/POLICIES:** The property is shown on the Wichita and Small Cities 2030 Urban Growth Areas map as being “rural.” Rural areas are located outside the 2030 urban growth area for Wichita and the small cities. This category is intended to accommodate agricultural uses and rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County.

The Unified Zoning Code (UZC) has no supplementary conditions for the Government Service Conditional Use. The UZC does have setback, parking and other requirements applicable to this request.

**RECOMMENDATION:** The proposed Conditional Use should be no more intense than agricultural use of the property which is permitted by right. Platting and existing codes should ensure that drainage and development of the site is compatible with surrounding properties. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting and the following conditions:

1. The Conditional Use shall be developed in accordance with the approved site plan.
2. No outdoor equipment or material shall be stored closer than 50 feet from property lines, or closer to 69<sup>th</sup> Street North than buildings on the site. No material storage shall exceed eight feet in height.
3. Lighting on the site shall conform to the site plan, shall be directed away from surrounding property lines, and shall be limited to 15-foot tall poles.
4. All on-site water and sewer facilities shall be approved by and constructed to Sedgwick County standards.
5. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for inspection of fuel and chemical storage.
6. All parking and drive aisles shall be maintained with an all weather surface, to include gravel, to minimize blowing dust.
7. All buildings and development on the site shall obtain necessary permits and conform to local, state, and federal requirements to include but not limited to building, zoning, fire, environmental and health codes.
8. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
9. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

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

1. **The zoning, uses and character of the neighborhood:** All property surrounding the site is zoned RR. Property to the north, east and west is used for agricultural purposes/farmland. Nine 10-acre or larger residential properties exist on the south side of 69<sup>th</sup> Street north, between Greenwich and 127<sup>th</sup> Street East.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned RR Rural Residential, which permits primarily large lot residential and agricultural uses by right. The site can continue to be used under the current zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the requested Conditional Use will introduce a use not currently found in the immediate area. A small increase in traffic to and from this site is possible. The proposed conditions of approval mitigate anticipated negative effects on nearby property.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The property is shown on the Wichita and Small Cities 2030 Urban Growth Areas map as being "rural." Rural areas are located outside the 2030 urban growth area for Wichita

and the small cities. This category is intended to accommodate agricultural uses and rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County.

- 5. Impact of the proposed development on community facilities:** The primary impact of the proposed use is a minimal increase in traffic to and from the site. Presumably, the Township will have the necessary equipment to maintain the unpaved 69<sup>th</sup> Street North.

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

**DENNIS** clarified that the area is farmland now and he understood staff to say that after parking lots are installed, runoff will be less.

**MCNEELY** indicated that the applicant will be required to submit a drainage plan which could include a detention pond on their property to insure that runoff does not leave the site any faster after development than it did before development.

**MICHAEL P. MOSKOL, TRUSTEE PAYNE TOWNSHIP, 5121 N. 131<sup>ST</sup> ST. EAST** commented that their current lease is non-renewable so they are looking for a new home. He said they have several million dollars worth of equipment used to maintain 54 plus miles of highway in Payne Township. He said they would like the light poles to be extended to 30 feet for security purposes. He said initially the neighbors to the south along 69<sup>th</sup> Street will probably be the watch dogs for the facility but eventually sometime in the future they would like to install some type of security system.

**MOSKOL** said they recognize that there is and has been a drainage issue at the site for some time and they have full intentions of addressing that issue. He said they are in full agreement with staff's recommendation to install cedar trees on the south side of the site and build up the curb appeal. He said they will store bulk materials such as gravel, sand and culverts on the north side of the building. He said as the size of the Township continues to increase they would like the option to build a building and parking if it is required in the future. He said they currently hold Township meetings at a facility in Greenwich and they would eventually like to move those meetings to this site. He said they will be installing a fence around the property to mitigate vandalism and contain equipment. He commented that they have met with some of the neighbors regarding drainage which they will address. He concluded by stating that one of the benefits of having the site at this location is wind blows snow across 69<sup>th</sup> Street until the road becomes closed. He said this will be one of the first roads that will be cleared in the future so that will be good news for folks living on the street.

**WARREN** asked how large the cedar trees will be.

**MOSKOL** said they were discussing installing cedar trees that would be "spaded in" so they can install larger trees. He said if that can't be done they will use saplings.

**ALDRICH** asked if they have considered putting the retention pond, if it is required, on the southeast corner of the property. He also mentioned how the 30-foot light poles will impact residences to the south of the site.

**MOSKOL** responded because the property has not been platted, they don't know where the pond is going to be located. He mentioned that the property has a rise to the north and how the water flows will

determine exactly where the water retention pond is located. He said the 30-foot lights are downwash that shine directly downward and don't put out much light to the side, not like a telephone pole.

**SHEETS** asked when the property was purchased and if they installed the culvert.

**MOSKOL** said they purchased the property from the City of Wichita about 3 months ago. He said a culvert was located to the east which they pulled out and made bigger and deeper to move water to the east instead of directly south across 69<sup>th</sup> Street. He said it was a way to channel some of the water in a different direction to the south and east. He said further to the east close to 69<sup>th</sup> Street another pond is located that the owner has expressed interest in taking as much water as he can get. He said regarding fish dying in one gentleman's pond, they don't know what was sprayed on the field since they did not farm it.

**ALDRICH** asked if water flowed onto properties prior to the Township redoing the culvert and if the culvert added to the water flow.

**MOSKOL** indicated that water has always moved to the south from the site which is why the road continues to sink. He said property north of 69<sup>th</sup> Street was farmed all the way out to the road with no ditch, in addition to water from 2 fields to the west. He said they clean the ditch every year; however, because the field to the north is not terraced, the ditch fills in with silt and sand. He said the culvert did not add to the water flow because the amount of water coming off the field is the same, it just flows further to the east rather than directly south.

**VIRGIL UHLNIAN, 6721 N. 127<sup>TH</sup> ST. EAST** referred to his 3 lots on the southwest corner of 127<sup>th</sup> and 69<sup>th</sup> Streets. He said they have lived there since 1970, raised their kids there and swam in their clear pond located on the last lot. He said last year water came down from the north into the pond and killed over 200 fish. He said the water has become contaminated by something out of that field. He said last year they planted cotton and he doesn't know what they spray on cotton. He said the culvert makes the water run down the road and cross 69<sup>th</sup> Street right at the corner of his first lot. He said that lot has 2 terraces. He said the water comes down in front of his house located in the middle of the 30 acres. He said he is complaining because the Township installed a culvert that runs the water down the road onto his land. He said he thinks the water should go straight south. He said according to law, water should be kept running on the natural terrain. He said his neighbor across the street has plenty of room for natural water to run in addition to a lagoon. He said if this can't be corrected he will cut out two terraces on his lots which will force the water to go straight south across his neighbor's driveway and on south to the houses around the lake which will probably affect 8-10 families. He requested that the Township take a look at this and run the water straight south. He said if they will do that he will not oppose them putting their equipment on this site.

**ALDRICH** asked if water runoff was an issue prior to the culvert being put in.

**UHLNIAN** said no water came off the pasture to the east.

**KATHLEEN SCHNEIDER, 12215 E. 69<sup>TH</sup> ST. NORTH** said she lives across the street from the site. She said she has contacted all her neighbors on 69<sup>th</sup> Street and started a petition in opposition to the request. She said this is not a suitable site for a maintenance yard because this is rural residential. She said property owners to the south are families with children and grand children and this location will cause them risk with increased traffic. She said they are also opposed to the unsightly yard with piles of

stone, sand, culverts and machinery. She said this will lower their property values and negatively affect future resale of their residences. She said residents walk, and ride horses and bicycles along this road to enjoy the peaceful countryside. She said maintenance equipment and storage will also affect wildlife that frequent the area. She concluded by mentioning increased noise levels and environmental issues such as sand blowing and chemicals. She said she would turn in the petition when it was completely signed.

**JOHNSON** asked who takes care of maintenance on 69<sup>th</sup> Street.

**SCHNEIDER** responded the Township.

**MOSKOL** apologized for the confusion regarding the culvert and said he was mistaken; there was no culvert at the existing location. He said there was a driveway across there and further to the east of the driveway there are some culverts that go east of the road and cross to the south. He said they would like to have water go straight to the south. He said the culverts fill up with silt and that stops the drainage. He said the ditch on the north side of 69<sup>th</sup> Street carries water to the east. He said they installed a culvert where the driveway was to help push water to the east and south. He said they had no ill intentions of killing fish or damaging property owner's ponds, they were simply trying to fix the drainage problem.

**SHEETS** asked if the Township needed a permit or an engineering study to do the culvert work or was it based on what they thought the remedy would be.

**MOSKOL** indicated no permit was necessary. He said they talked to the landowner and he had no objection.

**FOSTER** asked if they looked at other sites in the general area for purchase before settling on this site.

**MOSKOL** indicated that the availability of land in the Township is limited and cost is an issue since they are using taxpayer's dollars to purchase the land. He said because of restrictions they cannot take out a loan or borrow money; they have to pay cash for the property.

**ROBERT PARNACOTT, ASSISTANT COUNTY COUNSELOR** clarified that the land was originally owned by the City of Wichita, purchased by Sedgwick County and the County sold it to Payne Township.

**SHEETS** said this looks like a no win deal. He asked if any of the residents were notified about the Township's plans before the property was purchased.

**MOSKOL** replied no sir the Township had to purchase the land first.

**SHEETS** commented that the Township is representing the residents but not notifying them. He added that buyers can "option" land and then notify surrounding residents of plans.

**MOSKOL** asked how they would notify the entire Township except by a voting ballot.

**SHEETS** suggested they could have notified residents in the surrounding 2 mile radius.

**DENNIS** commented that the land still needs to be platted and platting should solve the drainage issue.

**JOHNSON** added that since the property needs to be platted there will be another public hearing.

**DENNIS** asked about the height of the light poles.

**MCNEELY** said staff's recommendation was for 20-foot light poles.

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

**WARREN** moved, **JOHNSON** seconded the motion, and it carried (7-3). **ALDRICH, SHEETS, SHERMAN** – No.

- **14. Case No.: CON2012-23** – Eduardo and Valdez Martinez (owners) request a City Conditional Use request to permit an Event Center in the City in LC Limited Commercial zoning on property described as:

Lot 2, Laham Addition, Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicants are requesting consideration for a Conditional Use permit for an "Event Center" on the LC Limited Commercial ("LC") zoned lot located on the southwest corner of 25<sup>th</sup> Street North and Shelton Avenue. Sec-B.4k. of the Unified Zoning Code ("UZC") defines an Event Center as "...premises that are frequently rented out for public or private activities that are not repeated on a weekly basis, and are not open to the public on a daily basis at times other than when an event is scheduled." If an Event Center is located within 300 feet of a "Church or Place of Worship," public "Park", "School", or residential zoning district it may be considered for a Conditional Use permit in the LC zoning district; Sec.III-D.6w. The site is within 300 feet of a church, a public park, a public school and residential zoning. The applicants propose to rent the facility out for children's birthday parties or other special events. The applicants have stated that there will be no alcoholic or malt beverages, live music, DJs, dancing, or outdoor activities allowed on the site; such activities would cause the facility to be considered a "Nightclub in the City," which would also require a Conditional Use. The applicants propose to have a 12 a.m. closing time.

North of the site, across 25<sup>th</sup> Street North is a LC and B Multi-Family Residential ("B") zoned strip retail store. The SF-5 Single-Family Residential ("SF-5") Cloud Elementary school and a LC zoned portion of Evergreen Public Park (with a branch library) are the other developments located north of the site. Vacant B zoned property abuts the west side of the site as well as abutting and adjacent SF-5 zoned single-family residences, a church and the Schell public park. SF-5 zoned single-family residences abut and are adjacent to the south side of the site. A LC zoned restaurant and a garage and TF-3 zoned single-family residences and vacant lands are adjacent to the east side of the site. The parks and the school are the most prominent features of the area.

The applicants' floor plan demonstrates a proposed 2,988 square-foot facility, and their site plan indicates 25 parking spaces on the site. The UZC would require 1 parking space per 45 square feet of public assembly for the proposed facility, or 66 total spaces. If the applicants do not expand but stay with the existing 2,028 square foot building, the required parking would be 45 spaces. With either development scenario the site does not provide the code required onsite parking. The applicants' site does have additional space that could be developed as parking, which would require a revised site plan.

**CASE HISTORY:** The site is Lot 2, of the Laham Addition, which was recorded with the Sedgwick County Register of Deeds March 2, 1971. Staff has received two written protest.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, B, SF-5	Retail strip, Public Park, public elementary school
SOUTH:	SF-5, TF-3	Single-family residences
EAST:	TF-3, LC	Single-family residences, vacant land
WEST:	SF-5	Vacant land, single-family residences, church, public park

**PUBLIC SERVICES:** 25th Street North is a two-lane minor arterial street at this location with a 100-foot right-of-way. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The *2030 Wichita Functional Land Use Guide* depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

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

- A. The site shall be in conformance with the approved site plan.
- B. No alcoholic or malt beverages, live music, DJs, dancing, or karaoke are permitted on the site.
- C. No outdoor entertainment, recreation, food or drink services are permitted on the site.
- D. The facility may be rented out for public or private activities that are not repeated on a weekly basis, and are not open to the public on a daily basis at times other than when an event is scheduled.
- E. The applicants shall comply with all applicable development standards of the UZC, including but not limited to parking, screening, and landscaping
- F. The applicant shall obtain, maintain, and comply with all applicable permits and licenses necessary for the operation of an Event Center in the City.
- G. 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.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The acreage and developments of Cloud Elementary school and Evergreen and Schell public parks are the most prominent features of the area. The mostly SF-5 zoned single-family residential neighborhoods abut these public institutional developments, with small LC zoned retail located along the 25<sup>th</sup> Street North – Arkansas Avenue intersection.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC which allows a wide variety of retail, office and residential uses. The site could be used as zoned and developed or redeveloped as currently zoned.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed use is for rented special events only and coupled with the conditions of the Conditional Use should minimize detrimental impact on nearby property. The site needs to meet the code required parking, screening and landscaping standard to further minimize detrimental impact on nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *2030 Wichita Functional Land Use Guide* depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities. A rental special event facility would be in general conformance with the local commercial designation.
5. Impact of the proposed development on community facilities: None identified.

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

**LONGNECKER** reported that DAB VI recommended denial of the application by a vote of 5-1. He referred to the memorandum from the DAB that indicates their concerns.

**JOHNSON** referred to the DAB memorandum and restrictions mentioned in the Staff Report. He said if this application is approved and any of those situations occur will the applicant lose their conditional use permit.

**LONGNECKER** replied yes and referred to condition F of the Staff Report. He said if the Police cite the owners for violation of any of the conditions listed in the Staff Report, the Zoning Administrator can declare the conditional use permit null and void.

**SHERMAN** asked about the site plan and the right-of-way in front of the building.

**LONGNECKER** said he believes opportunities for additional parking are going to be in the rear or to the side of the building.

**MITZI MARTINEZ, 2461 N. SHELTON, APPLICANT** said her family lives a block from the location and that she has lived in the neighborhood since she was 8 years old. She said they will be using the site for birthday parties, baptisms and first communion celebrations. She said it would not be a party without background music. She said they want to add an area for games for the children and a seating area for parents. She said they also own the restaurant on the corner. She said maybe they could talk to Plaza Mexico about additional parking spaces. She also mentioned parking on the street and that it should not create a traffic problem. She said they won't have outdoor activities.

**ALDRICH** asked about music.

**MARTINEZ** said background music not live music.

**FOSTER** referred to item B on the Staff Report and clarified that there will be no live music.

**MARTINEZ** said they wanted speakers and a microphone.

**WARREN** clarified that there would be no DJ's, no live music or dances and the applicant's are in agreement with Staff recommendations on those items.

**MARTINEZ** said yes, they just want speakers.

**WARREN** said it was hard for him to understand why there is so much opposition to this proposed use which is a block from a recreation center with outdoor basketball courts. He said he cannot believe that this use is going to be a detriment to the neighborhood.

**DAVID CARDONA, 2502 SHELTON** said he has lived in the neighborhood for 66 years, all of his life, and there have been a lot of problems in the neighborhood. He mentioned noise, traffic, trash, fights, and broken beer bottles constantly every day. He said the building is too small for 70 kids, ages 3-9 years old. He said the only way into the property is from Shelton Street and the main entrance should be off of 25<sup>th</sup> Street. He said there is a lot of traffic already on Shelton Street and people park on both sides so you can only get one car at a time through there. He said they applicant started out with 3-9 year olds and now they are talking about 19 to 21 year olds. He said there will be loud music and the place will get trashed up. He said he can't believe they are going to be so quiet over there because he has not seen a party that is quiet and he has seen hundreds of them. He concluded by saying that they will have a problem at the site.

**FOSTER** asked if Mr. Cardona was referring to parties at this particular site.

**CARDONA** said yes and added that prior to the building being vacant a church operated there and held parties and cookouts and piles of trash were blown up and down the street when the wind came out of the north and guess who had to pick it up.

**LOLA HOWARD, 2534 MASCOT** said the Commissioners can't realize what a neighborhood problem is until they live in it. She said she has lived in the area since December, 1958. She said the area is predominantly senior households. She said development is encroaching and mentioned the little taco shop and how the person who lives right next door can't go out onto their back porch. She mentioned trash and that the people on Shelton have put up with the traffic forever. She mentioned the Mexican Plaza on 25<sup>th</sup> Street that rents out retail space in addition to hosting carnivals where parking overflows down Mascot and Shelton. She said this venue is too small. She said there are 3 exits from the building and she wondered are they going to have security to keep the kids out of the vacant lot. She mentioned that the church at the location held sermons with 5-foot speakers that would make her kitchen windows rock. She cited the parks and schools in the areas but added that all the industrial development is just getting closer and closer to their neighborhood. She said she would like to have another house on that lot. She concluded by saying if you don't live in their neighborhood please don't say you can't understand it.

**MARTINEZ** said concerning the noise level, there will be no outdoor activities. She said parents will not be dropping their children off; it will be a family place where mom, dad and the children celebrate birthdays, etc. She said they have been running a similar place on Broadway for 3 years with no problems. She said they want to keep the venue safe for themselves and the children. She said the venue will be well managed and organized.

**KLAUSMEYER** asked about the average size of the parties.

**MARTINEZ** said around 15 families at one time.

**ALDRICH** asked if they were limiting the venue for kids only and if so, what age group would not be allowed to rent the facility.

**MARTINEZ** said the maximum age would be 11-12 year olds.

**FOSTER** clarified so the venue will not be available for quinceaneras.

**MARTINEZ** responded no.

**SHERMAN** clarified that this was not the “approved” site plan and referred to the background in the Staff Report that refers to the need for 66 parking spaces if the applicant expands the size of the venue and 45 spaces if they stay at the current size. He said the site plan shows 21 spaces.

**LONGNECKER** responded that the applicant will need to comply with the UZC requirements for parking.

**ALDRICH** said he is familiar with the history of this area and the issues that have occurred over the years including issues at the park including drinking, sports events getting out of hand, and gang issues in addition to issues at Plaza Mexico. He said this particular site has been an issue in the past so he understands where residents are coming from which is one of the reasons why DAB VI voted to deny the application. He referenced the comment if you don’t live in the neighborhood you don’t know how it is and although he doesn’t live in the neighborhood he does know how it is. He said he was going to support DAB’s recommendation for denial of the application.

**WARREN** said he understands where the neighbors are coming from and doesn’t want to discount that at all. He said he believes what is happening here is frustration over past issues is being focused on this one applicant. He said this site is already zoned LC so there is going to be a business of some sort at this location. He said he believes a business is going to help improve the neighborhood or at least not make it any worse. He said he has a hard time looking at this and saying this is going to make the neighborhood worse than what it is. He said you don’t punish one business and one individual because of what is going on around it. He said he can’t deny a property owner from reasonable use of their property because someone has made mistakes in the past.

**FOSTER** said he had a concern regarding the age issue and said he questions the viability of that particularly with 15 year olds and their quinceaneras. He also asked about someone celebrating their 50<sup>th</sup> wedding anniversary.

**KLAUSMEYER** clarified that the applicant will be on site during all events supervising the parties.

**MARTINEZ** said yes, or her Mom, Dad or sister. She said one of them is always on site.

**JOHNSON** said he agreed with **COMMISSION WARREN** that this is LC zoned property. He said with the additional conditions staff has required it is even more restrictive so he is going to support the motion.

**WARREN** said the Commission has talked about age but the reality is behavior. He said as long as the applicant lives up to the conditions, he doesn't care about age.

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

**DENNIS** moved, **WARREN** seconded the motion, and it carried (8-2). **ALDRICH** and **SHEETS** – No.

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**NON-PUBLIC HEARING ITEMS**

**15.** Case No.: Discussion of statements made in "The Commissioner" relative to the Wichita-Sedgwick County Comprehensive Plan. Requested by Commissioner M.S. Mitchell.

It was the general consensus to defer discussion of the item until the June 7, 2012 Planning Commission meeting.

**FOSTER** asked what part of "The Commissioner" the Planning Commission was going to discuss.

**DIRECTOR SCHLEGEL** indicated **COMMISSIONER MITCHELL** did not let him know specifically.

There was brief discussion concerning planning mandates and concepts discussed in "The Commissioner"; the process to place items on the Planning Commission agenda; establishing a procedure to place items on the agenda approved by the Commission; the secretary's duties relative to placing items on the agenda; possible amendment to the by-laws to include the procedure and review of the by-laws.

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The Metropolitan Area Planning Commission adjourned at 5:04 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.

\_\_\_\_\_  
John L. Schlegel, Secretary

(SEAL)

Wichita-Sedgwick County Metropolitan  
Area Planning Commission