

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

June 21, 2012

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, June 21, 2012 at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Shawn Farney, Chair; David Dennis, Vice Chair; Bob Aldrich; David Foster; Bill Johnson; Don Klausmeyer; John W. McKay, Jr.; M.S. Mitchell; Don Sherman; Debra Miller Stevens and Chuck Warren. Ron Marnell; Morrie Sheets and George Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Jess McNeely, Senior Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Kelly Rundell, Deputy City Attorney; Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary

1. Approval of the May 17, 2012 Planning Commission minutes.

MOTION: To approve the May 17, 2012 meeting minutes, as amended.

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

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2012-00013: One-Step Final Plat – TRUESDELL MIDDLE SCHOOL ADDITION,**
located south side of Pawnee, west of Seneca.

NOTE: This is an unplatted site located within the City of Wichita.

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 applicant's drainage plan.
- D. Traffic Engineering has approved the access controls. The plat proposes two access openings along Pawnee. The final tracing will include the widening of the east opening along Pawnee with 50 feet of complete access control from the east line of the plat.
- E. Traffic Engineering has approved the 50-foot right-of-way for Pawnee with a 10-foot sidewalk and utility easement as shown on the plat.
- F. The spelling of "surveyor's certificate" shall be corrected in the plat's text.
- G. This property is within a zone identified by the City Engineer's office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially

engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineer's office.

- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- I. 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.)
- J. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- K. 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.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. 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.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- P. 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).

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

JOHNSON moved, **WARREN** seconded the motion, and it carried (11-0).

2-2. SUB2012-00014: One-Step Final Plat – HARRY & HILLSIDE CVS ADDITION, located southwest corner of Harry and Hillside.

NOTE: This is an unplatted site located within the City of Wichita.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve the site. A guarantee is needed for the abandonment of the sanitary sewer main.
- 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. Traffic Engineering has approved the access controls. The plat proposes one opening along both Hillside and Harry.
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- F. Traffic Engineering has approved the arterial rights-of-way.
- G. County Surveying has requested the plat denote the described distance along the south property line.
- H. County Surveying has requested the distance of 190 feet in the legal description be replaced with 172 feet.
- I. County Surveying has requested that monuments are set along the plat boundary.
- J. County Surveying has requested that D and M are added to the legend.
- K. The spelling of “surveyor’s certificate” shall be corrected in the platlor’s text.
- L. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. 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.

- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- P. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, 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.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- U. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

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

JOHNSON moved, **WARREN** seconded the motion, and it carried (11-0).

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- 2-3. **SUB2012-00015: One-Step Final Plat – CENTRAL & OLIVER CVS ADDITION**, located northeast corner of Central and Oliver.

NOTE: This is a replat of the East Highlands Addition along with a vacated street.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve the site. A guarantee is needed for the abandonment of the existing water main in the vacated Elm Street right-of-way and for the relocation of the sanitary sewer main.
- 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. A minimum pad elevation should be included on the face of the plat.
- D. Traffic Engineering has approved the access controls. The plat proposes complete access control along Central and one opening along Oliver.
- E. A cross-lot access agreement shall be provided with the abutting property owners to the north and east.
- F. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- G. Traffic Engineering has approved the arterial rights-of-way subject to revising the right-of-way along Central to 36.5 feet.
- H. County Surveying requests the following corrections to the legal description for Tract 2:
 - 1. Reflect the right-of-way easement recorded on Film 588, Page 497 for the south five feet of Lots 27 and 28 and the tapered portion on Lot 29 (from five feet on the west line of Lot 29 to 4.17 feet on the east line of Lot 29).
 - 2. Reflect the north 1.5 feet of the south 6.5 feet of Lots 27, 28 and 29 deeded to the City of Wichita at DOC#28649001.
 - 3. Reflect the right-of-way easement recorded on DOC#28714093 over the south 6.5 feet of Lot 30.
- I. The platlor's text shall note the dedication of the street to and for the use of the public.
- J. The spelling of "surveyor's certificate" shall be corrected in the platlor's text.
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. 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.

- M. 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.)
- N. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- O. 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.
- P. 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.
- Q. 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.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- T. 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).

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

JOHNSON moved, **WARREN** seconded the motion, and it carried (11-0).

3. PUBLIC HEARING – VACATION ITEMS

COMMISSIONER DENNIS revealed that he had ex-parte communication on the item but that it would not influence his vote.

- 3-1. VAC2012-17: City request to vacate a restrictive covenant for a private drainage system,** generally located north of 37th Street North, east of Rock Road, at 8131/8135 E. Mulberry.

- OWNER/AGENT:** Jack M. and Shelley J. Johnson (owners), Alan R. and Anita R. Wiggans (owners), Daniel K. Back (Agent)
- LEGAL DESCRIPTION:** Generally described as Lots 1 and 2, Block 1, Willowbend 9th Addition, Wichita, Sedgwick County, Kansas
- LOCATION:** Generally located east of Rock Road, north of 37th Street North, at 8131 and 8135 East Mulberry (WCC #II)
- REASON FOR REQUEST:** Replace private drain line with existing surface drain facilitating the vacation of a restrictive covenant that limits the buildable area on Lot 1, Block 1, Willowbend 9th Addition
- CURRENT ZONING:** Subject property is zoned LC Limited Commercial (“LC”). Adjacent northern, southern and western properties are zoned LC. Abutting eastern property is zoned SF-5 Single-family Residential.

The Willowbend 9th Addition was recorded March 15, 2006. A restrictive covenant was recorded with the plat to provide for the ownership and maintenance responsibilities of a private drainage system in Lots 1 and 2 and addressing the obstruction of surface drainage. The covenant includes the standard language that it may not be terminated without the consent of the City of Wichita. The property owners propose to remove the private drainage system and replace it with surface drainage, which necessitates the termination of the restrictive covenant through the vacation process. Lot 1 is undeveloped and Lot 2 contains a single-family dwelling.

The private drain is located in an easement established by separate instrument (Film 847, Pg 503). The portion of the easement located within the subject property contains no water or sewer (per Water Utilities Department) and no gas (per Black Hills Corporation). Westar Energy has equipment in the area and any relocation or removal of that equipment would be at the applicant’s expense.

City Stormwater Management is in agreement with the vacation of the Restrictive Covenant subject to the recording of a new restrictive covenant that requires the landowner to acknowledge the runoff from the abutting golf course and relocate the drainage as necessary to construct future improvements that would not adversely impact the surrounding improvements. The applicant has provided the requested restrictive covenant which states that removal of the private drainage system would occur at the time of construction on said Lot 1, Block 1.

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 associated with the request to vacate the restrictive covenant for the private drainage system:

- 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 May 31, 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 portions of access control and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

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

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide an executed restrictive covenant as requested by City Stormwater Management. Along with the Vacation Order, the restrictive covenant will be forwarded to Wichita City Council for final action and recorded with the Register of Deeds.
- (2) Any relocation or reconstruction of all/any utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the

vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

PUBLIC HEARINGS

4. **Case No.: CON2012-27** – Pathway church, c/o Bryan Dunham (Owner/Applicant) request a City Conditional Use request for a daycare, general on property zoned SF-5 Single-Family Residential ("SF-5") on property described as:

N1/2 LOT 1 AND LOT 1 EXC N1/2 WESTLINK CHRISTIAN CHURCH ADDITION,
WICHITA, SEDGWICK COUNTY, KANSAS.

BACKGROUND: The applicant, Pathway Church, is requesting a Conditional Use for a “Day Care, General” on the SF-5 Single-Family Residential (SF-5”) zoned 33.35-acre property located southwest of the Maize Road and 21st Street North intersection. The *Wichita-Sedgwick County Unified Zoning Code* (“UZC”) defines a day care, general as a facility that provides “...care, protection and supervision for more than ten individuals at any one time, including those under the supervision or custody of employees, or a Day Care center for 10 or fewer individuals at any one time that is not operated as a Home Occupation.”; UZC Sec.II-B.4.b. A day care, general may be considered as a Conditional Use in the SF-5 district; UZC Sec.III.D.

The applicant proposes to use a portion of the church for a summer day care for up to 120 children, ages 6-12, May 29 – August 3. Proposed hours are 7:00 a.m. to 6:00 p.m. The site plan that was submitted shows the aerial of the subject site. The submitted site plan does not show the location of the pick-up and drop-off areas, the number of parking spaces available and any outdoor playground areas. First Student buses are proposed to provide transportation for field trips.

The north side of the large subject site abuts or is adjacent to LC Limited Commercial (“LC”) and GC General Commercial (“GC”) zoned development that includes; a furniture store, a nursery, retail, banks, a fast food restaurant a fitness center, self storage and a wireless communication facility. All of this commercial development is covered by the overlay Community Unit Plan (“CUP”) DP-184. A SF-5 zoned single-family residential neighborhood abuts the west side of the site. SF-5 zoned single-family residences, an excavation company (CU-156) and NO Neighborhood Office (“NO”) zoned medical/dental offices abut the south side of the site. SF-5 zoned single-family residences and two small churches are located east of the site, across Maize Road. There is also a small NO zoned insurance office in this area on the east side of Maize Road.

CASE HISTORY: The property is platted as Lot 1, Westlink Christian Church Addition, which was recorded with the Sedgwick County Register of Deeds June 15, 1998.

ADJACENT ZONING AND LAND USE:

NORTH: LC, GC Furniture store, a nursery, retail, banks, a fast food restaurant a self storage and a wireless communication facility, fitness center

WEST: SF-5 Single-family residences
SOUTH: SF-5, NO Single-family residences, excavation company, medical/dental offices
EAST: SF-5, NO Single-family residences, churches, insurance office

PUBLIC SERVICES: The site's east side has access and frontage on Maize Road, a major arterial that is currently under construction at its close by 21st Street North intersection. Access to the site is also available from the west through the residential street Stoney Point, which goes through a single-family residential neighborhood. All utilities are available to the subject property.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide of the Comprehensive Plan" identifies this site as appropriate for "Major Institutional." This category includes institutional facilities of a significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities. The 33.35-acre SF-5 zoned church site fits this category. A church is permitted by right in the SF-5 zoning district and a day care, general, may be considered as a Conditional Use in the SF-5 district.

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 day care, general shall be associated with the church and shall comply with Article III, Section III-D.6.i of the UZC.
2. No bus traffic/access through the west side of the site onto Stoney Point Street.
3. The property shall be developed and maintained in accordance with the approved site plan.
4. The applicant shall obtain all applicable local and state permits and operate in conformance to state regulations.
5. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

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

1. **The zoning, uses and character of the neighborhood:** The north side of the large subject site abuts or is adjacent to LC Limited Commercial ("LC") and GC General Commercial ("GC") zoned development that includes; a furniture store, a nursery, retail, banks, a fast food restaurant a fitness center, self storage and a wireless communication facility. All of this commercial development is covered by Community Unit Plan ("CUP") DP-184. A SF-5 zoned single-family residential neighborhood abuts the west side of the site. SF-5 zoned single-family residences, an excavation company (CU-156) and NO Neighborhood Office ("NO") zoned medical/dental offices abut the south side of the site. SF-5 zoned single-family residences and two small churches are located east of the site, across Maize Road. There is also a small NO zoned insurance office in this area on the east side of Maize Road.
2. **The suitability of the subject property for the uses to which it has been restricted:** The 33.35-acre site is zoned SF-5. The SF-5 zoning district is primarily limited to low density residential uses and a few compatible nonresidential uses such as churches, parks or schools.

The site is currently developed with a church. The proposed use will utilize existing facilities on the subject site.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** This large church has ample parking and interior space for a day care for a proposed maximum of 120 children. The church's large site (33.35-acres) provides significant open space for buffering of any outdoor playgrounds/activities associated with the day care, general. The UZC provides four (4) supplemental use regulations for a day care, general, including limiting outdoor play to the hours of 7:30 a.m. to 6:30 p.m. if located within 100 feet of a lot containing a dwelling unit and providing parking and loading areas.
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 of the application would result in a lost opportunity for participation in the church's summer program for pre-teen children.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2030 Wichita Functional Land Use Guide of the Comprehensive Plan" identifies this site as appropriate for "Major Institutional." This category includes institutional facilities of a significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities. The 33.35-acre SF-5 zoned church site fits this category. A church is permitted by right in the SF-5 zoning district and a day care, general, may be considered as a Conditional Use in the SF-5 district.
6. **Impact of the proposed development on community facilities:** All public facilities are available and existing road facilities are adequate. The goal of the current construction at the close by Maize Road - 21st Street North intersection is intended to improve traffic flow in the area, which the proposed day care, general will impact.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

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5. **Case No.: DER2012-02** - requests an amendment to Article III, Section III-D.6.f.(1) of the Wichita-Sedgwick County Unified Zoning Code modifying the distance when Conditional Use approval is required for a "car wash."

BACKGROUND: City staff researched an improved process to deal with noise complaints, from residential properties, generated by the operation of commercial car washes. A staff committee comprised of representatives from the Office of Central Inspection, Law Department, Metropolitan Area Planning Department (MAPD) and Public Works recommended that a two pronged approach be considered: 1) create and adopt administrative guidelines that outline when decibel readings can be effectively used to enforce noise complaints; and 2) amend the Unified Zoning Code (UZC) to increase the distance surrounding a proposed car wash when Conditional Use review and approval is required. Currently the UZC requires Conditional Use approval for a car wash if the car wash is located within 200 feet of a residential zoning district (Article III, Section III-D.6.f.(1)). The committee recommends a

text amendment to the UZC to increase the distance when a Conditional Use is required up to 500 feet from residential zoning.

The authority to initiate a text amendment to the UZC rests with the governing body or the MAPC (Article V, Section C.1 and 2). On April 10, 2012, the Wichita City Council approved a recommendation directing MAPD staff to prepare an amendment for consideration by the MAPC and the governing body. Text amendments to the UZC require public notice and public hearing; this MAPC agenda item has been advertised in the official paper for the June 21, 2012 MAPC public hearing.

CASE HISTORY: The 1996 UZC appears to be the first zoning code requiring a Conditional Use for car washes within 200 feet of residential zoning.

CONFORMANCE TO PLANS/POLICIES: The *1999 Update to the Wichita-Sedgwick County Comprehensive Plan Land Use-Commercial/Office Objective I.B.* is to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” The **Commercial Locational Guideline #3** of the *Comprehensive Plan* recommends that commercial development have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses.

The proposed amendment to the UZC, increasing the distance when Conditional Use approval is required for a car wash from 200 to 500 feet from residential zoning, supports these *Comprehensive Plan* objectives.

RECOMMENDATION: Based on these factors and the information available prior to the public hearing, staff recommends adoption of the following proposed amendment to Article III, Section III-D.6.f.(1) of the *Wichita-Sedgwick County Unified Zoning Code*:

Conditional Use when near residential zoning. Although listed as permitted Uses in some zoning Districts, Car Washes shall always be considered Conditional Uses and subject to Sec. V-D (Conditional Use review procedures) when located within ~~200~~ 500 feet of residential zoning Districts. This distance shall be measured from the nearest Lot Line of a zoning Lot with residential zoning to the nearest Lot Line of the zoning Lot containing the Car Wash.

This recommendation is based upon the following findings:

1. **The zoning, uses and character of the neighborhood:** The proposed UZC amendment would increase the review of car wash impacts on residential areas. This amendment could help ensure that residential areas are better informed and protected from the noise impacts of car washes.
2. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed UZC amendment will not detrimentally impact properties surrounding future car washes.
3. **Relative gain to the public health, safety and welfare as compared to the loss in value or hardship imposed upon the applicant:** The proposed UZC amendment could create legal non-conforming situations where car washes currently exist greater than 200 but less than 500 feet from residential zoning districts. The UZC non-conforming use standards would then apply.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:
The *1999 Update to the Wichita-Sedgwick County Comprehensive Plan Land Use-Commercial/Office Objective I.B.* is to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” The **Commercial Locational Guideline #3** of the *Comprehensive Plan* recommends that commercial development have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses.
The proposed amendment to the UZC, increasing the distance when Conditional Use approval is required for a “car wash” from 200 to 500 feet from residential zoning, supports these *Comprehensive Plan* objectives.
5. Impact of the proposed development on community facilities: None.

JESS MCNEELY, Planning Staff presented the Staff Report.

JOHNSON asked how the 500 foot figure came about.

MCNEELY indicated that was the figure that was recommended by the staff committee.

ALDRICH said he had a couple of concerns and asked how many complaints prompted this action.

MCNEELY said he did not know the exact number of complaints; however, it was enough to get City Council attention to direct staff action.

ALDRICH asked what it took to trigger an action like this; how many complaints. He asked about nightclubs and other businesses that generate noise and why one type of business was being singled out. He referred to Plans and Polices in the Staff Report, and said the recommendation kills the idea of complementing existing commercial activities and pro-business growth.

MCNEELY commented the proposed amendment would increase the distance of a car wash location from residential zoning that would require Conditional Use permit review and approval.

ALDRICH commented that obviously this was a noise issue. He added that there was no noise policy in the Unified Zoning Code (UZC). He referred to recommendation #1 in the Staff Report and asked what the recommended decibel level was. He said if they are setting a noise policy, how will staff make a determination what is noisy to me or someone else.

CHAIRMAN FARNEY asked don't car washes with blowers have to have doors.

MILLER stated that the UZC does not specifically require doors for car washes and added that in some instances, as part of the Conditional Use approval, this body has required doors. He said the only noise requirement in the UZC is that you keep whatever noise you generate on your property. He said there is a separate noise ordinance that exists outside the UZC that is administered by Environmental Health. He said if there is a noise complaint staff goes out with the decibel reader and takes readings to determine if there is a violation. He said he understood that was the group that was going to develop the recommendations for the policy explaining when taking decibel readings was useful.

ALDRICH asked shouldn't it be referenced to the UZC.

MILLER stated that it was a separate ordinance and if a complaint goes to court it will be based on the separate noise ordinance not the UZC.

ALDRICH asked about any potential negative effects on properties located in the County.

MCNEELY said since this is a change to the UZC it would apply to both the City and County.

DENNIS said he was confused how increasing the area of notification is going to reduce complaints on noise. He said more people will come to speak to the Commission; however, once the case is approved this is not going to make a difference on how much noise comes out of the car wash. He said the idea doesn't make sense.

MILLER STEVENS clarified so this will apply to future car washes but does not apply now. She asked if the Commission was "beating a dead horse." She said she doesn't understand the relevance of the change. She asked how many potential car wash issues come before the Commission that are within 200 feet of residential zoning now.

MCNEELY responded that there are quite a few car washes in the City today that required a Conditional Use because they were within 200 feet of residences. He said the proposed amendment would catch potential situations of residences that are not within 200 feet but 500 feet of a car wash.

MILLER STEVENS responded that 500 feet seems a bit excessive especially since you can have a bar within 300 feet of a school or park.

MCNEELY said that was the recommendation from the staff committee, but he was not provided background information as to where the 500 foot figure came from.

WARREN said he agrees that 500 feet seems a bit excessive. He referenced an example in Derby where there was not even 200 feet between the residence and the car wash. He said with this proposal, you are likely to have 2 football field lengths from the business and residences. He said this will result in more costs to notify surrounding residents and more difficulty in getting applications approved. He asked about the possibility of 300 feet as a more reasonable number.

MCKAY referenced the UZC and stated that a car wash can only be placed in Limited Commercial (LC) zoning without a hearing. He said anything else needs to come before the Planning Commission for review and approval. He said most self-operating car washes are less than 500 feet from residences and close to neighborhood areas so the neighbors will use them.

MILLER STEVENS suggested that the policy be left the way it is with the current standards because of lack of established criteria for the recommended amendment and no explanation of what prompted the request.

JOHNSON mentioned that he felt it was unusual that no one was present to speak on the item wondered why staff was put through this exercise.

FOSTER asked if Environmental Health could supply an appropriate number relative to the noise issue and a decibel level.

MILLER said he didn't know if they have done any research. He gave an example of staff checking decibel levels on hand-operated car washes and said they found that none of the car washes surveyed exceeded the noise ordinance; however, he added that they didn't check on any with blower dryers and those generate more noise. He said he believes the 500 feet number was an effort to try to address the issue of citizens saying "I didn't get a notice and if I had, I would have attended the Planning Commission Hearing." He said the amendment does not change the notification distance.

MOTION: To leave the current policy in place.

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

NON-PUBLIC HEARING ITEMS

Other Matters/Adjournment

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

State of Kansas)
Sedgwick County) ^{ss}

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

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

(SEAL)

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