

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

August 2, 2012

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, August 2, 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, Don Klausmeyer, John W. McKay Jr., M.S. Mitchell and Debra Miller Stevens. Bill Johnson, Ron Marnell, Morrie Sheets, Don Sherman, George Sherman and Chuck Warren were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Neil Strahl, Senior Planner; Robert Parnacott, Assistant County Counselor and Jeff VanZandt.

1. Approval of prior MAPC minutes.

There were no minutes to be approved.

2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

- 2-1 SUB2012-00012: One-Step Final Plat – WATERWALK WEST ADDITION, generally located on the southwest corner of McLean and Maple.

NOTE: This is a replat of a portion of Shirk's 1st Subdivision Addition and Winne's Addition. This is Lot 2 of the West Bank 1st Addition, a plat that was approved by MAPC in 1995 and never recorded. This replat includes the vacation of an east-west alley, a north-south alley, Mentor Street and a portion of Laclede Avenue.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve the site. The utility easement along the west side of the plat should be 20 feet wide.
- 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 subject to revisions addressing water quality.
- D. One access opening is proposed along Maple. Two right-in/out openings are proposed along MacLean Blvd. City Traffic Engineering has approved the access controls subject to the openings being defined in accordance with the site plan.
- E. This property is within a zone identified by the City Engineer's office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and

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

- F. The Applicant has platted a 15-foot building setback along both Maple and MacLean which represents an adjustment of the Zoning Code standard of 20 feet for the LC and B Residential District respectively. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- G. 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.
- H. The platting 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, 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.
- 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. Westar Energy has requested an additional utility easement to be platted on this property. 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.

ALDRICH moved, **DENNIS** seconded the motion, and it carried (8-0).

2-2 **SUB2012-00018: One-Step Final Plat – TIMBER RIDGE 5TH ADDITION,** generally located 250 feet south of 21st Street North, on the east side of Maize Road.

NOTE: This is a replat of Lot 5 of the Timber Ridge 4th Addition, with an adjustment of lot boundaries, deletion of setbacks and establishment of additional easements. This site is also contained within Parcel 1 of the Greystone Community Unit Plan (CUP DP-197).

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve the site.
- B. City Stormwater Management has approved the drainage plan.
- C. Traffic Engineering has approved the access controls. The plat proposes one opening along both Maize and 21st Street North as approved in the previous plat and CUP.
- D. The perimeter of the proposed lot shall match the perimeter of the CUP parcel boundaries. A CUP adjustment will need to be approved.
- E. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- F. The wall easement shall be referenced in the plattor's text.
- G. GIS has requested abbreviations for the street types and directionals.
- H. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- I. The plattor'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.

- J. 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.)
- K. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- L. 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.
- M. 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.
- N. 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.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- Q. 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.

ALDRICH moved, **DENNIS** seconded the motion, and it carried (8-0).

2-3 **DER2012-00005: Request for a Street Name Change from Taft Avenue to Towne West Drive**, generally located south of Maple, west of West Street, between West Street and Tracy Street.

Note: Traffic Engineering and the Wichita/Sedgwick County Address Committee support the street name change.

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

ALDRICH moved, **DENNIS** seconded the motion, and it carried (8-0).

3. **PUBLIC HEARING – VACATION ITEMS**

3-1. **VAC2012-24: County request to vacate a portion of a floodway reserve.**

APPLICANT/OWNER: Scott W. & Amy K. Beabout

LEGAL DESCRIPTION: Generally described as an eastern portion of the floodway reserve agreement as recorded with the Sedgwick County, Kansas Register of Deeds, January 2, 1981; FILM 457 – Pages 634 & 635 (see attached legal and exhibits)

LOCATION: Generally located 1/2-mile east of 143rd Street East, on the south side of 45th Street North (BoCC #1)

REASON FOR REQUEST: Remove to match the FEMA flood hazard area

CURRENT ZONING: Subject property and all abutting and adjacent properties are zoned RR Rural Residential (“RR”)

The applicant is requesting consideration to vacate a portion of the floodway reserve agreement as recorded with the Sedgwick County Register of Deeds, January 2, 1981; FILM 457 – Pages 634 & 635. The subject portion of the floodway reserve agreement is located on an unplatted RR Rural Residential (“RR”) zoned tract. Per GeoZone, there appears to be a residence and outbuildings located within the vacation site; the appraiser’s link shows no building dates. The floodway reserve agreement states that “...no human habitat may be built therein and that any other obstruction to be placed therein shall be permitted only with the approval of the Kansas State Board of Agriculture, Division of Water Resources in accordance with KSA 24-126 or the appropriate governing body.” GeoZone shows the vacation site to be outside an abutting western and southern FEMA Flood zone that extends north and south of 45th Street North. The County Engineer has given approval. There are no utilities located in the site.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from County Engineering, Code Enforcement, Permits and Inspection, 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 a portion of the floodway reserve agreement 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 July 12, 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 floodway reserve agreement 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 a legal description of the vacated portion of the platted floodway as approved by County Public Works. Provide to Planning on a Word document, via e-mail to be used on the Vacation Petition and Vacation Order. This must be provided prior to the case going to County Commission for final action.
2. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request 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 a legal description of the vacated portion of the platted floodway as approved by County Public Works. Provide to Planning on a Word document, via e-mail to be used on the Vacation Petition and Vacation Order. This must be provided prior to the case going to County Commission for final action.
2. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request 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.

MITCHELL moved, KLAUSMEYER seconded the motion, and it carried (8-0).

3-2. VAC2012-25: City request to vacate a portion of platted front setback.

APPLICANT/AGENT: Roger and Tammy Carr (Owners)

LEGAL DESCRIPTION: Generally described as vacating the east 10 feet of the platted 30-foot front yard setback on Lot 7, Block 3, Northwest Gardens Addition, an addition to Wichita, Sedgwick County, Kansas

LOCATION: Generally located south of 29th Street North and west of Amidon Avenue (1931 West 26th Street North) (WCC #VI)

REASON FOR REQUEST: Installation of swimming pool equipment

CURRENT ZONING: The site is zoned SF-5 Single-family Residential. Abutting southern and eastern properties are zoned Single-family Residential. Adjoining northern and western properties are zoned Single-family Residential.

The applicant proposes to vacate the east ten feet of the platted 30-foot front yard setback along Clarence Avenue on the described property.

The Unified Zoning Code's minimum front yard setback for the SF-5 zoning district is 25 feet. If the setback was not platted, the applicant could request an Administrative Adjustment that would reduce the SF-5 zoning district's minimum 25-foot front yard setback by 20%, resulting in a 20-foot front yard setback, which has been requested by the applicant. No platted easements are located within the platted setback. No manholes, sewer or water lines are located within the described portion of the platted setback.

Stormwater Management and City of Wichita Public Works and Utilities Department have no objection to the proposed vacation. No objections have been received from any franchised utilities. The Northwest Gardens Addition was recorded with the Register of Deeds on June 12, 1950.

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 a portion of the described platted 30-foot front yard setback.

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 July 12, 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 platted front yard setback 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. Vacate the east ten feet of the platted 30-foot front yard setback that runs parallel to Clarence Street and the west lot line of Lot 7, Block 3, Northwest Gardens Addition, Wichita, Sedgwick County, Kansas.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
3. All improvements shall be according to City Standards and at the applicant's 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. Vacate the east ten feet of the platted 30-foot front yard setback that runs parallel to Clarence Street and the west lot line of Lot 7, Block 3, Northwest Gardens Addition, Wichita, Sedgwick County, Kansas.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
3. All improvements shall be according to City Standards and at the applicant's 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.

MITCHELL moved, **KLAUSMEYER** seconded the motion, and it carried (8-0).

3-3. VAC2012-26: City request to vacate an easement dedicated by separate instrument.

APPLICANT/OWNER: M.J. & Dana K. Dilks

LEGAL DESCRIPTION: Generally described as the drainage easement dedicated by separate instrument (FILM–PAGE: 29280403) located along the north 18 feet of Lot 6, Block A, Hancock Second Addition to Haysville (see attached dedication)

LOCATION: Generally located west of Hydraulic Avenue, east of I-35, north of 77th Street south, on the west side of Ida Street (BoCC #2)

REASON FOR REQUEST: Not needed

CURRENT ZONING: Subject property and abutting northern, eastern and southern properties are zoned SF-20 Single-Family Residential (“SF-20”). I-35 Interstate Highway abuts the west side of the site.

The applicant is requesting consideration to vacate the drainage easement dedicated by separate instrument as recorded with the Sedgwick County Register of Deeds, March 29, 2012; FILM–PAGE: 29280403. GeoZone shows the site to be outside all FEMA flood zones, floodways or areas protected by levees. There are no public utilities located within the easement. The County Engineer has approved the request. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the easement, that need to be covered with easements. The site is located within the City of Haysville’s area of zoning influence and the vacation request, as instructed by County Law, will be sent to their Planning Commission for review. The Hancock Second Addition to Haysville was recorded September 25, 1968.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from County Engineering, Code Enforcement, Permits and Inspection, 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 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 July 12, 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 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. Provide a legal description of the vacated portion of the platted floodway as approved by County Public Works. Provide to Planning on a Word document, via e-mail to be used on the Vacation Petition and Vacation Order. This must be provided prior to the case going to the County Commission for final action.
2. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request 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 a legal description of the vacated portion of the platted floodway as approved by County Public Works. Provide to Planning on a Word document, via e-mail to be used on the Vacation Petition and Vacation Order. This must be provided prior to the case going to the County Commission for final action.
2. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request 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.

MITCHELL moved, **KLAUSMEYER** seconded the motion, and it carried (8-0).

3-4. VAC2012-22: City request to vacate a portion of platted complete access control.

APPLICANT/OWNER: W.K. Capital Enterprises

LEGAL DESCRIPTION: Generally described as allowing one 30-foot wide drive in the north 115 feet of the south 155 feet of Lot 24, Comotara Industrial Park 5th Addition

LOCATION: Generally located south of 34th Street North on the west side of Webb Road (WCC #II)

REASON FOR REQUEST: New development on south portion of Lot 24, Comotara Industrial Park 5th Addition with a proposed Lot Split

CURRENT ZONING: Subject property and abutting western and southern properties are zoned LI Limited Industrial (“LI”). Adjacent northern (across 34th Street North) and eastern properties (across Webb Road) are zoned LI.

The applicant is requesting consideration to vacate a portion of the platted access control on Lot 24, Comotara Industrial Park 5th Addition to allow one 30-foot wide drive in the north 115 feet of the south 155 feet of the site onto Webb Road. The applicant proposes a lot split, which has not been filed at this time. Lot 24 has 438.86 feet of Webb Road frontage. The plat permits one drive onto Webb, “as determined by the City Engineer,” and that drive is currently located approximately 50 feet south of the 34th Street North – Webb Road intersection. Webb Road is a four-lane arterial, without turn lanes or raised median at this location. Jabara Airport is located directly east of Lot 24, across Webb Road. There is platted complete access control on the Colonel James Jabara Airport Addition (Jabara Airport) between 35th Street North and Jabara Road, which is the portion of the Colonel James Jabara Airport Addition that is located directly east of Lot 24. Subdivision standards requires a 200-foot offset for drives not lined up on the opposite sides of an arterial and not having conflicting left turns; there are no permitted drives opposite Lot 24, thus no conflicting left turns. Subdivision standards require a 200-foot spacing for right-in – right-out drives.

There is public water located within the Webb Road right-of-way. Westar has equipment located in the general area and relocation of that equipment may be necessary, at the applicant’s expense and per City Standards. The Comotara Industrial Park 5th Addition was recorded December 21, 1978.

NOTE: At the July 26, 2012, Subdivision Committee meeting, the abutting southern property owner verbally requested consideration of an alternative location of the access/drive. The abutting property proposed a joint access/drive with the applicant. The proposed joint drive would be located on Lot 24, Comotara Industrial Park 5th Addition (north portion, which is the applicant’s property) and Lot 3, Block 4, Mediterranean Plaza Addition (south abutting property). The Subdivision Committee recommended approval of both the original request and the second alternative request, if the two property owners could come to agreement on the joint drive; this is reflected in the conditions listed below. Staff is in agreement with Subdivision. Staff and the applicant were made aware of this alternative joint drive proposal late Monday, July 23, 2012, so it’s been a relatively short time frame for dialogue between the applicant, W.K. Capital Enterprises and the abutting south property owner, Goodwill Industries.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time July 12, 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 platted 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. (a) Per the approval of the Traffic Engineer, vacate the platted access control along the site's Webb Road frontage to allow two openings to Lot 24, Comotara Industrial Park 5th Addition. One of the two openings will be located on a parcel created by a Lot Split. The other opening is the existing opening located along the north approximately 50 feet of Lot 24's Webb Road frontage. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.
Or
(b) Provide a joint drive/access located on Lot 24, Comotara Industrial Park 5th Addition (north portion) and Lot 3, Block 4, Mediterranean Plaza Addition (south portion), if the two property owners can come to agreement on the joint drive .
2. The vacation case will not be forwarded to Council for final action until a Lot Split of Lot 24, Comotara Industrial Park 5th Addition has been filed and reviewed for approval by City Staff.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense. If necessary provide all plans and any guarantees needed by Public Works to ensure any relocation or reconstruction of utilities will be completed. Either the guarantee(s) and/or approved plans must be provided to Public Works prior to the case going to Council for final action. Regarding Westar Energy equipment, the applicant can contact Becky Thompson, the Construction Services representative for this area at 316-261-6320.
4. All improvements shall be according to City Standards and at the applicant's expense, including;
(a) the construction of a new drive from the site onto Webb Road and (b) the continuation of the curb and gutter. Provide Public Works with a guarantee (approved project/plans) to ensure that these and any other associated improvements will be made. If the drive is not being immediately constructed, provide a drive approach certificate, which will be recorded with the Register of Deeds. Either the guarantee(s) and/or the drive approach certificate must be provided to Public Works (guarantee) or Planning (drive approach certificate) prior to the case going to Council for final action.
5. 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. (a) Per the approval of the Traffic Engineer, vacate the platted access control along the site's Webb Road frontage to allow two openings to Lot 24, Comotara Industrial Park 5th Addition. One of the two openings will be located on a parcel created by a Lot Split. The other opening is the existing opening located along the north approximately 50 feet of Lot 24's Webb Road frontage. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.
Or
(b) Provide a joint drive/access located on Lot 24, Comotara Industrial Park 5th Addition (north portion) and Lot 3, Block 4, Mediterranean Plaza Addition (south portion), if the two property owners can come to agreement on the joint drive .
2. The vacation case will not be forwarded to Council for final action until a Lot Split of Lot 24, Comotara Industrial Park 5th Addition has been filed and reviewed for approval by City Staff.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense. If necessary provide all plans and any guarantees needed by Public Works to ensure any relocation or reconstruction of utilities will be completed. Either the guarantee(s) and/or approved plans must be provided to Public Works prior to the case going to Council for final action. Regarding Westar Energy equipment, the applicant can contact Becky Thompson, the Construction Services representative for this area at 316-261-6320.
4. All improvements shall be according to City Standards and at the applicant's expense, including; (a) the construction of a new drive from the site onto Webb Road and (b) the continuation of the curb and gutter. Provide Public Works with a guarantee (approved project/plans) to ensure that these and any other associated improvements will be made. If the drive is not being immediately constructed, provide a drive approach certificate, which will be recorded with the Register of Deeds. Either the guarantee(s) and/or the drive approach certificate must be provided to Public Works (guarantee) or Planning (drive approach certificate) prior to the case going to Council for final action.
5. 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.

BILL LONGNECKER, Planning Staff presented the Staff Report.

FARNEY asked if the second access that was just applied for will be more or less than 200 feet from the entrance in question.

LONGNECKER commented that the traffic engineer is in the room, but he believes that the distance will be 100 feet. The Traffic Engineer agreed. He then said that Jabara Airport is directly east of the subject site, across Webb Road, and it has complete access control. Jabara would have to make application for complete access control for another entrance, but that is unlikely since Jabara already has their controlled entrances on to their site established.

ALDRICH asked if the two property owners talked about there being only one access point. He said he figured they did and didn't come to an agreement. He asked if there will be a cross lot agreement between the two properties, or will there be two separate drives?

LONGNECKER stated that there will be two separate drives. The applicant does not want cross lot access. He does not want traffic from the south property coming up and using his parking or the drive. It might be possible if they came to an agreement regarding maintenance and repairs of the entrance. He stated that the agent for the applicant was present and the agent for the south property owner is here to provide more information regarding the dialogue between the owners.

KIRK MILLER, K.E. MILLER ENGINEERING, INC. (AGENT) stated the applicant would prefer just the one drive as their own drive. One reason the applicant is moving to this location is because the current location is near other offices and people using those offices always used the applicant's driveway and parking in front of his building. He believes the separate drive would prevent this from occurring at the subject site. Another reason is that the applicant would like to preserve the existing tree line along the south property line.

PHIL MEYER, BAUGHMAN COMPANY, P.A. (AGENT –SOUTH PROPERTY OWNER) stated that Goodwill called to find out what it would take to get an access opening towards the north which would line up with the redesign of the parking lot. He stated they are not in opposition of the request and the engineers and architects for both properties have been discussing solutions to the access. He stated he thinks they worked out a solution that works for both properties and that is if this application is approved, this application would be heard by the Wichita City Council on September 11th. His client's case will be in front of the Planning Commission on September 6th. What they are requesting is for this case to continue and be approved, but to not forward it to City Council until his client's application is heard by the Planning Commission. What they want to do is have the two cases go in front of the council at the same time. Bill was accurate in his explanation, there is not 200 feet separation, but the access management policy does allow for the Traffic Engineer to waive that on certain conditions. With the situation along this stretch of Webb Road and no access on the east side of the road due to Jabara Airport, the Traffic Engineer feels comfortable with waiving the 200 foot separation requirement.

MCKAY asked the agent for this application if they had any problem with what Mr. Meyer suggested regarding holding up this application so the other application could catch up in the process.

MILLER stated they had no problems with the suggestion.

MOTION: To approve subject to the recommendation of the Subdivision Committee,

staff recommendation and that the application not be forwarded to City Council until the application for the property to the south is heard by the MAPC.

MCKAY moved, **ALDRICH** seconded the motion, and it carried (8-0).

PUBLIC HEARINGS

4. **Case No.: ZON2012-18** – City of Wichita, c/o John Philbrick (Owner/Applicant) and Baughman Company, c/o Phil Meyer (Agent) request a City zone change for GC General Commercial (“GC”) on property currently zoned LC Limited Commercial (“LC”) and B Multi-family Residential (“B”) in the D-O Delano Neighborhood Overlay District (“D-O”) on property described as:

All of Lots 1 through 16, inclusive, on Maple St., Winne’s Addition to Wichita, Kansas, Sedgwick County, Kansas, TOGETHER with Lot 17, on said Maple St., except the east 22.00 feet thereof, TOGETHER with all of Lots 2 through 28, even inclusive, on Sycamore St., in said Winne’s Addition, TOGETHER with Lots 30 and 32, on said Sycamore St., except the west 5.00 feet thereof condemned for Kellogg Street in District Court Case No. A-60844, TOGETHER with all of Lots 1 through 27, odd inclusive, on Smyth Ave., in said Winne’s Addition, TOGETHER with Lots 2 through 24, even inclusive, on said Smyth Ave., except the east 37.00 feet thereof, TOGETHER with all of the east-west alley as dedicated in said Winne’s Addition lying south of and abutting the south line of said Lots 1 through 12, inclusive, on said Maple St., TOGETHER with all of the north-south alley as dedicated in said Winne’s Addition lying east of and abutting the east line of Lots 2 through 20, even inclusive, on said Sycamore St., and lying west of and abutting the west line of Lots 1 through 19, odd inclusive, on said Smyth Ave., TOGETHER with that part of the north-south alley as dedicated in said Winne’s Addition lying in the block bounded on the west by said Sycamore St., bounded on the east by said Smyth Ave., and bounded on the north by Mentor St., as dedicated in said Winne’s Addition, said alley lying south of and abutting the south line of said Mentor St. and lying north of and abutting the north line of that part of Winne’s Addition condemned for Kellogg Street in District Court Case No. A-60844, TOGETHER with that part of the east-west alley as dedicated in said Winne’s Addition lying in the block bounded on the north by said Maple St., on the south by said Mentor St., on the west by said Smyth Ave., and on the east by Winne Ave., (now Laclede Ave.), as dedicated in said Winne’s Addition, said alley lying east of and abutting the east line of said Smyth Ave. and lying west of and abutting the following described line: Commencing at the southwest corner of Lot 17 on said Maple St.; thence easterly along the south line of Lot 17 on said Maple St., 3.00 feet for a point of beginning; thence southerly to a point on the north line of Lot 2 on said Smyth Ave., said point being 37.00 feet westerly of the northeast corner of said Lot 2, and for a point of termination, TOGETHER with that part of said Smyth Ave. as dedicated in said Winne’s Addition lying south of and abutting the south line of said Maple St. and lying north of and abutting the north line of that part of said Winne’s Addition condemned for Kellogg Street in District Court Case No. A-60844, and TOGETHER with that part of said Mentor St. as dedicated in said Winne’s Addition lying east of and abutting the east line of said Sycamore St. and lying west of and abutting the following described line: Commencing at the southeast corner of Lot 20 on said Smyth Ave.; thence westerly along the south line of said Lot 20, 37.00 feet for a point of beginning; thence southerly to a point on the north line of Lot 22 on said Smyth Ave.,

said point being 37.00 feet west of the northeast corner of said Lot 22, and for a point of termination.

BACKGROUND: The application area is 5.86 acres of platted property located at the southeast corner of West Maple Street and South Sycamore Street (505 West Maple) that is currently zoned B Multi-family Residential (“B”) and LC Limited Commercial (“LC”), and subject to the D-O Delano Neighborhood Overlay District (“D-O”). The site is owned by the City of Wichita, and has 460 feet of frontage along West Maple and 600 feet of frontage along South Sycamore Street, and is developed with the Wichita Ice Center and associated parking. The City of Wichita leases the management of the facility to a private entity that operates an ice rink where public ice skating and professional and amateur hockey (categorized by the zoning code as “indoor recreation and entertainment” and/or an “auditorium or stadium”) occurs. The facility also has a fitness center (categorized by the zoning code as a “personal improvement service”) and a drinking establishment restaurant (“DER”). All of the uses previously listed are permitted by right in the GC zoning district; however, none of these uses are permitted in the B district. All of the described uses except “auditorium or stadium” are permitted in the LC district. An “auditorium or stadium” requires GC zoning.

It is planning staff’s belief that when the facility initially opened, it was categorized as a “parks and recreation” use. The Unified Zoning Code (“UZC”) defines “parks and recreation” as “a park, playground, or community facility that is owned by or under the control of a public agency or homeowner’s association and that provides opportunities for active or passive recreational activities, and a cultural facility that provides cultural services to the public, including a museum, art gallery, observatory, planetarium, botanical garden, arboretum, zoo or aquarium that is owned by and under the control of a public agency. For purposes of this definition, parks and recreation shall include those parks, community facilities, and cultural facilities that are owned by or under the control of a public agency and leased to private entities for recreational activities, including recreational and cultural uses that involve paid admission or that allow the sale of cereal malt beverages or alcoholic beverages for consumption on premises.” Per the UZC, “parks and recreation” uses are permitted by right in all districts.

The application area has: LC zoned land located to the north, Lawrence Dumont Stadium, and east, vacant; GC General Commercial (“GC”), warehouse, SF-5 Single-family Residential (“SF-5”) and TF-3 Two-family Residential (“TF-3”), single-family residential, zoned land to the west; B Multi-family Residential (“B”), vacant, land located to the east, and unzoned U. S. 54/400 Highway right-of-way located to the south.

CASE HISTORY: The property is platted as the Winnes Addition that was recorded in 1907. On February 8, 2001, the MAPC adopted DR2000-00011, the Delano Neighborhood Revitalization Plan and its associated design guidelines. On March 20, 2001, the Wichita City Council adopted the Delano Neighborhood Revitalization Plan as an amendment to the Wichita-Sedgwick County Comprehensive Plan. On December 19, 2002, the MAPC considered case number DR2002-00011, which proposed the rezoning of portions of the Delano Neighborhood. The MAPC unanimously recommended approval of the proposed rezoning on December 19, 2002, and on January 14, 2003, the City Council approved the rezoning. DR2003-00009 revised the Delano Neighborhood Overlay District boundary and adopted the April 1, 2003 Delano Neighborhood Design Guidelines.

ADJACENT ZONING AND LAND USE:

NORTH: LC Limited Commercial; Lawrence Dumont Stadium
SOUTH: Unzoned Kellogg right-of-way
EAST: LC Limited Commercial and B Multi-family Residential; vacant
WEST: GC General Commercial, SF-5 Single-family Residential and TF-3 Two-family Residential; warehouse, single-family residences

PUBLIC SERVICES: West Maple Street has 40 feet of half-street right-of-way, while South Sycamore Street has 60 feet of full right-of-way. At the intersection of Maple and Sycamore, Maple has been improved to a four through-lanes with an additional left turn lane. Sycamore has two through-lanes and a left turn lane. Municipal sewer and water currently serve the site.

CONFORMANCE TO PLANS/POLICIES: The application area is located within the boundary of the Delano Neighborhood Revitalization Plan. The Delano Neighborhood Revitalization Plan included a future recommended land map (Figure 15) that depicts the application as being appropriate for “recreation/sports facilities, includes stadiums, arenas, etc.”

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to replatting within 1-year.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood:** Property surrounding the application area is zoned SF-5, TF-3, B, LC and GC. Approximately one-half of the surrounding properties are zoned one of the noted commercial districts while the other one-half of the properties are zoned one of the mentioned residential districts. The dominant use in the area is Lawrence Dumont Stadium.
- 2. The suitability of the subject property for the uses to which it has been restricted:** The property could continue to be operated a public park or recreational use. However, over time the range of uses located at the facility has evolved to other uses, such as a professional ice hockey club and a drinking establishment restaurant, that are probably better situated on GC zoning than the site’s present B and LC zoning.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed rezoning should not negatively impact nearby properties as there are other properties zoned GC in the larger neighborhood.
- 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 the facility to expand the types of uses permitted and broaden the range of recreational activities available to the public.
- 5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The application area is located within the boundary of the Delano Neighborhood Revitalization Plan. The Delano Neighborhood Revitalization Plan included a future recommended land map (Figure 15) that depicts the application as being appropriate for “recreation/sports facilities, includes stadiums, arenas, etc.”

6. **Impact of the proposed development on community facilities:** The facility is served by all community supplied facilities. Approval of the requested zone change should not negatively impact existing or anticipated demand for community facilities.

FOSTER asked the planner to confirm that by going to GC zoning, will the Delano Overlay, relative to the uses, still be in place on that site.

DALE MILLER stated that the Delano Overlay specifically had a recommendation on the Future Land Use Map that it's appropriate for recreation, sports facilities and includes stadiums, arenas, etc.

MILLER asked **FOSTER** if he was asking about the design guidelines or just the use.

FOSTER stated he was interested in just the use.

MILLER stated that this request is consistent with the Delano Plan.

FOSTER asked about anything related to undesirable businesses in the GC? Will the Section D regulations kick in regarding separation from residential zoning?

MILLER stated that those regulations would still apply.

PHIL MEYER, BAUGHMAN COMPANY, PA (AGENT) stated that they are in agreement with staff comments and could answer any questions that the commission could have.

JOHN REIZ, southwest corner of Sycamore and Maple stated he received a letter of notice and wasn't sure if he would be affected by this request.

MILLER stated that this particular zone change would not affect the gentleman's property or anyone else's property that is adjoining.

MOTION: To approve subject to staff recommendation.

ALDRICH moved, **KLAUSMEYER** seconded the motion, and it carried (8-0).

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5. **Case No.: ZON2012-19** – Wichita Habitat for Humanity, c/o Adam Doll (Owner/Applicant) and Ruggles and Bohm PA, c/o Chris Bohm (Agent) request a City zone change for GO General Office (“GO”) on property currently zoned MF-29 Multi-family Residential (“MF-29”) on property described as:

Odd lots 121 to 127 inclusive, Wichita Street, Mungers Original Town, Sedgwick County, Kansas.

BACKGROUND: The applicants request a zone change from the existing MF-29 Multi-family Residential (“MF-29”) to GO General Office (“GO”) zoning on a 0.32-acre platted property. The site is currently vacant. This property received a Zoning Administrative Adjustment earlier this year to reduce the street side setback from 20 to 16 feet for residential development. The property owners have now

changed their intended use for the property from residential to office, and therefore request this zone change.

The subject property is within the environs of the of the historic registered Riverview Apartments requiring Historic Preservation Board design review of building plans. Property north of the site is zoned B Multi-family Residential (“B”) and GC General Commercial (“GC”) and is developed with multi-family residences. Property south of the site is zoned LI Limited Industrial (“LI”) and is used for an office and warehousing. East of the site, across Wichita Street, is property zoned TF-3 Two-family Residential (“TF-3”) and developed with a church, and property zoned LI used for offices. West of the site is property zoned B and developed with multi-family residences, and property zoned GO used for offices.

CASE HISTORY: The property was platted as odd Lots 121 to 127, Wichita Street, Munger’s Original Town Addition to Wichita in 1870.

ADJACENT ZONING AND LAND USE:

NORTH:	B, GC	Multi-family residences
SOUTH:	LI	Office and warehousing
EAST:	TF-3, LI	Church, offices
WEST:	G, GO	Multi-family residences, offices

PUBLIC SERVICES: The subject property has frontage along 8th Street North, a paved, two-lane, local street with a 75-foot right-of-way; and along Wichita Street a paved, two-lane, local street with a 90-foot right-of-way including a bicycle/pedestrian path. Public water and sewer service are available to the subject property.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use reflecting the current zoning; this site is immediately north of an area designated for “Local Commercial” use. This site is within the Midtown Neighborhood Plan which identifies this location as appropriate for multi-family development, reflecting the current zoning. The Midtown Neighborhood Plan identifies the area immediately south of this site as appropriate for professional and administrative services.

RECOMMENDATION: The immediate surrounding area is a mixture of multi-family residential, institutional, office, and warehousing uses. Staff finds the proposed zoning and development compatible with the existing uses in the immediate area. Based upon the information available prior to the public hearings, planning staff recommends that the request be **APPROVED**.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property north of the site is zoned B and GC and is developed with multi-family residences. Property south of the site is zoned LI and is used for an office and warehousing. East of the site, across Wichita Street, is property zoned TF-3 and developed with a church, and property zoned LI used for offices. West of the site is property zoned B and developed with multi-family residences, and property zoned GO used for offices.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site

could be developed with single or multi-family residences under the current zoning.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the request would permit office uses. The Zoning Code identifies office uses as more intense than the multi-family residences permitted under the current zoning. However, traffic demand and other impacts from an office use will likely be less than those from multi-family residential development.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use reflecting the current zoning; this site is immediately north of an area designated for “Local Commercial” use. This site is within the Midtown Neighborhood Plan which identifies this location as appropriate for multi-family development, reflecting the current zoning. The Midtown Neighborhood Plan identifies the area immediately south of this site as appropriate for professional and administrative services. The subject property is within the environs of the of the historic registered Riverview Apartments requiring Historic Preservation Board design review of building plans.
5. **Impact of the proposed development on community facilities:** The proposed zone change should have no significant impact on streets and utility services.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, FOSTER seconded the motion, and it carried (7-0-1).

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6. **Case No.: ZON2012-20** – Wichita Habitat for Humanity, c/o Adam Doll (Owner/Applicant) and Ruggles and Bohm PA, c/o Chris Bohm (Agent) request a City zone change for SF-5 Single-family Residential (“SF-5”) on property currently zoned MF-29 Multi-family Residential (“MF-29”) LI Limited Industrial (“LI”) on property described as:

Lots 144, 146, 148, 150, 152, 154, 156, 158 and 160, on Wichita Street, Munger’s Original Town of Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicants request a zone change from the existing MF-29 Multi-family Residential (“MF-29”) and LI Limited Industrial (“LI”) to SF-5 Single-family Residential (“SF-5”) zoning on a 0.72-acre platted property. The property owners wish to develop the site with single-family residences, which are permitted on the existing MF-29 zoning. However, the existing LI zoning prohibits residential development; therefore the applicant requests this zone change.

The subject property is partially within the environs of the of the historic registered Riverview Apartments requiring Historic Preservation Board design review of building plans. Property north of the site is zoned TF-3 Two-family Residential (“TF-3”) and used for a park and elementary school. Property south of the site is zoned MF-29 and LI, and is developed with single and two-family residences. Property east of the site is zoned MF-29 and LI and is developed with a warehouse and

single-family residences. Property west of the site is zoned B Multi-family Residential (“B”) and is developed with multi-family residences.

CASE HISTORY: The property was platted as even Lots 144 to 160, Wichita Street, Munger’s Original Town Addition to Wichita in 1870.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3	Park, elementary school
SOUTH:	MF-29, LI	Single and two-family residences
EAST:	MF-29, LI	Single-family residences, warehouse
WEST:	B	Multi-family residences

PUBLIC SERVICES: The subject property has frontage along 9th Street North, a paved, two-lane, local street with a 100-foot right-of-way; and along Wichita Street a paved, two-lane, local street with a 90-foot right-of-way including a bicycle/pedestrian path. Public water and sewer service are available to the subject property.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. The Urban Residential designation is intended to reflect the full diversity of residential development densities and types typically found in a large urban municipality. This site is within the Midtown Neighborhood Plan which identifies this location as appropriate for multi-family development, reflecting the current zoning.

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

This recommendation is based on the following findings:

- The zoning, uses and character of the neighborhood:** Property north of the site is zoned TF-3 and used for a park and elementary school. Property south of the site is zoned MF-29 and LI, and is developed with single and two-family residences. Property east of the site is zoned MF-29 and LI and is developed with a warehouse and single-family residences. Property west of the site is zoned B and is developed with multi-family residences.
- The suitability of the subject property for the uses to which it has been restricted:** The site could be developed with single or multi-family residences under the current zoning on the MF-29 zoned portions of the property. The LI zoned portions of the property could not be developed with residences.
- Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the request would eliminate LI zoning from this property, making the site more compatible with nearby residences.
- Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. The Urban Residential designation is intended to reflect the full diversity of residential development densities and types typically found in a large urban municipality. This site is within the Midtown Neighborhood Plan which

identifies this location as appropriate for multi-family development, reflecting the current zoning. The subject property is partially within the environs of the of the historic registered Riverview Apartments requiring Historic Preservation Board design review of building plans.

5. **Impact of the proposed development on community facilities:** The proposed zone change should have no significant impact on streets and utility services.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, FOSTER seconded the motion, and it carried (7-0-1).

7. **Case No.: CON2012-30** – Richard Gronniger (Owner), Kansas Paving, c/o Larry Hacker (Applicant) and Baughman Company, c/o Russ Ewy (Agent) request an amendment to CON2009-00036 to allow for an additional two-years for a sand and gravel extraction operation on property described as:

That part of the Southwest Quarter of Section 4, Township 26, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as: The West half of said Southwest Quarter, EXCEPT the South 220 feet of the North 545 feet of the West 240 feet thereof, and EXCEPT beginning at the Southwest corner of said Southwest Quarter; thence on an assumed bearing of North 00 degrees 27 minutes 48 seconds East, 120 feet along the West line of said Southwest Quarter; thence North 78 degrees 00 minutes 34 seconds East, 1,364.80 feet to the East line of said West half; thence South 00 degrees 22 minutes 58 seconds West, 400 feet to the Southeast corner of said W half; thence South 89 degrees 50 minutes 52 seconds West, 1,333.33 feet to the point of beginning.

BACKGROUND: The applicant is requesting an amendment to Conditional Use CON2009-00036's condition #5: "Sand extraction shall cease June 18, 2012. All equipment and materials associated with the operation shall be removed from the premises by September 18, 2012. Site restoration (grading, seeding, etc.) could continue after September 18, 2012."

The applicant is requesting a two-year extension for both the sand extraction, the removal of equipment and site restoration due to a slow down of the economy, specifically construction. The proposed amendment would change condition #5 to read: Sand extraction shall cease August 2, 2014. All equipment and materials associated with the operation shall be removed from the premises by October 2, 2014. Site restoration (grading, seeding, etc.) could continue after October 2, 2014. The August 2, 2014, date is two years from today's MAPC meeting.

The subject property and the surrounding area is zoned RR Rural Residential ("RR"), which permits consideration of a Conditional Use for sand and gravel extraction. The area is outside the 2030 urban growth area for Wichita and the small cities. The area is primarily agricultural in use with scattered large tract/lot single-family residences, including 15-18 houses along 73rd Street North. Non-residential development includes a landscaping contractor's yard (County variance BZA2010-00023) located northeast of the site and two church campgrounds are located west of the site. These non-residential

developments have 73rd Street North frontage/access. The contractor's yard has the potential to generate up to 20 vehicle trips per day. Access onto the site is off of 73rd, a non-section line sand and gravel road maintained by Park Township with contractual assistance from the applicant. The merging of the Arkansas River and a section of canal of the Wichita – Valley Center Floodway forms the triangle shaped south boundary of the area. The site is located within this triangle of merging river and man-made drainage canal. Other past and current non-residential development/permits in the area includes at least two other spent sandpits (CU-277 & CU-268) and one approved sandpit (CON2006-00013, not in operation) located within approximately ½-mile of the site. All of these sand pits had or will be directing their sand trucks to Ridge Road.

CASE HISTORY: The current, unplatted (+/-) 36-acres site was approved for:

- (a) CON2003-00032 permitted a 17.388-acre sand and gravel extraction operation, which created a 15-acre sand pit lake. The Conditional Use was permitted to operate for 8-years, with conditions. CON2003-32 was approved by the MAPC September 18, 2003. No recorded protests were received.
- (b) CON2005-00007 amended CON2003-32, to allow a five-strand barbed wire fence instead of the required chain link fence, because the site was located entirely in the Arkansas River 100-year flood boundary. Because the applicant was requesting a modification of a Supplemental Use Regulation standard of the Unified Zoning Code, the request went to the Board of County Commissioners (BoCC, the governing body) for consideration and action. The BoCC approved the request at their June 1, 2005, meeting while retaining the other conditions of CON2003-32. No recorded protests were received.
- (c) CON2007-00044 amended CON2005-07 by;
 - (i) Allowing an 18-acre expansion of the existing unplatted 17.388-acre sand and gravel extraction operation; this increased the 15-acre sand pit lake by 18-acres.
 - (ii) Requiring the applicant to apply a dust control agent (Magnesium Chloride or Calcium Chloride) at rates and frequencies that will provide dust control on the plant drive and on 73rd Street North, from the entrance to the site to Ridge Road.
 - (iii) Ending all operations by June 18, 2010, and removing all equipment from the site by September 18, 2010. The new dates were one year less, than as approved on CON2003-32.

CON2007-44 was considered by the MAPC December 20, 2007, which recommended that the applicant and staff come to a resolution in regards to improvements, maintenance and repair of 73rd Street North. The agreed improvements, maintenance and repair of 73rd were approved at the MAPC's March 13, 2008, meeting, as reflected above. Although no protests were recorded, there were neighborhood concerns expressed at the MAPC's meetings about truck traffic generated by the sand and gravel extraction and its impact on 73rd Street North and the neighborhood, as well as drainage.

(d) CON2009-00036 was considered December 3, 2009, and the MAPC approved an amendment to condition #5, allowing a two-year extension for the sand extraction, the removal of equipment and site restoration due to a slow down of the economy, specifically construction (see opening paragraph of "BACKGROUND").

(e) CON2012-00039 was an application for an Administrative Adjustment, to extend the time for the sand pit to operate, between June 12, 2012, and final action on today's case, CON2012-00030.

Staff has received calls protesting the lack of regular dust control on the road, as generated by trucks coming and going from the sand pit.

ADJACENT ZONING AND LAND USE:

NORTH:	“RR”	agriculture, scattered large tract single-family, contractor’s yard
SOUTH:	“RR”	agriculture, Arkansas River, sand pits
EAST:	“RR”	agriculture, scattered large tract single-family, drainage
WEST:	“RR”	scattered large tract single-family, church campgrounds

PUBLIC SERVICES: This site has access to 73rd Street North, a sand, non-section line, Park Township road. 73rd Street North intersects Ridge Road, a two-lane paved County Highway, and located ¾ of a mile east of the site. There are no current traffic volume figures available for either road. The “2030 Transportation Plan” estimates that the traffic volume on Ridge Road, between 77th Street North and 61st Street North will be approximately 5,500 vehicles per day in 2030. Municipal water and sewer services are not currently available to serve this site. Use of the site for sand and gravel extraction can be supported by on-site water and sewer service. The site is located outside the 30-year urban service area and all small city growth areas.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide classifies this area as “Rural.” This classification encompasses land outside the 2030 urban growth areas for Wichita and the small cities. The “Rural” classification is intended to accommodate agricultural and rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County, and predominately large lot residential sites or subdivisions with provisions for individual, or community water and sewer services. A sand and gravel extraction operation is considered “mining and quarrying,” which is an industrial use. The Wichita/Sedgwick County Comprehensive Plan indicates that industrial uses in rural areas should be limited to those that are agriculturally oriented, dependent upon a natural resource, or part of an appropriate expansion of an existing industrial use. Sand and gravel extraction would be dependent on a natural resource. Sand and gravel extraction operations are a common use in areas of rural Sedgwick County that are in close proximity to the Arkansas River.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, amending condition #5, as shown in bold, and retaining the other listed conditions:

1. The extraction operation on the site shall proceed in accordance with the approved site and redevelopment plans (including any modifications to limitations on the scope of excavations required by other regulating agencies), and be subject to the supplementary use regulations found in the Unified Zoning Code at Article III, Section III-D.6.gg, unless specifically modified by conditions contained in this conditional use.
2. If limitations on the scope of excavation are required after final approval, the applicant shall provide a revised site plan depicting those restrictions. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan. The applicant shall provide a date when the 18-acre expansion of the original site will begin to be used as part of the sand and gravel extraction operation.
3. Fencing shall be what was approved in CON2003-32.
4. Signage shall be as allowed by the Sedgwick County Sign Code.
5. Sand extraction shall cease August 2, 2014. All equipment and materials associated with the operation shall be removed from the premises by October 2, 2014. Site restoration (grading, seeding, etc.) could continue after October 2, 2014.
6. The applicant will apply a dust control agent (Magnesium Chloride or Calcium Chloride) at rates and frequencies that will provide dust control on the plant drive and on 73rd Street North, from

the entrance to the site to Ridge Road. The initial application rate and application schedule will be based on a written recommendation made by an experienced supplier for an annual maintenance cycle. A letter from the supplier stating the recommended annual schedule will be provided to MAPD, County Public Works and Code Enforcement prior to April 1, 2008. The applicant shall notify County Code Enforcement in writing within 10 days after each application of dust control agent. The notification shall state the dust control agent used, application rate, total amount applied and date of application. The application schedule and rates may be adjusted by the applicant based on actual road and weather conditions with written approval from County Code Enforcement and County Public Works.

7. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel and Public Works, prior to the commencement of any sand and gravel extraction operation, providing an area for temporary detention storage of drainage on the site.
8. 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.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the surrounding area is primarily agricultural with scattered large tract single-family residential all zoned RR. The proposed two year extension of all operations (including removal of equipment as listed in the amended condition #5) of the sand and gravel extraction site will not alter the zoning, uses and character of the area. There are at least 3 other spent or approved gravel and sand extraction operations located from the Arkansas River to 77th Street North, west of Ridge Road. Other non-residential development includes a landscaping contractor's yard (County variance BZA2010-00023) located northeast of the site and two church campgrounds are located west of the site. These non-residential developments have 73rd Street North frontage/access. The contractor's yard has the potential to generate up to 20 vehicle trips per day.
2. **The suitability of the subject property for the uses to which it has been restricted:** The RR zoning designation of the subject property permits sand and gravel extraction upon approval of a Conditional Use. The current operational time of the subject site's sand pit as permitted with CON2009-36 is over. Because of the slowdown in the economy the extraction of sand and gravel from the site has been less than what was anticipated. The applicant has also filed an Administrative Adjustment, to extend the time for the sand pit to operate, prior to final action on today's case, CON2012-00030.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed two-year extension means a longer period of heavy truck traffic to and from the site. The applicant is still required to operate within the conditions of CON2009-36, including providing dust control on the plant drive and on 73rd Street North, from the entrance to the site to Ridge Road.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Land Use Guide of the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development. The "Rural" classification is intended to accommodate agricultural and rural based uses that are no more offensive than those

agricultural uses commonly found in Sedgwick County, and predominately large lot residential sites or subdivisions with provisions for individual, or community water and sewer services. The Wichita/Sedgwick County Comprehensive Plan indicates that industrial uses in rural areas should be limited to those that are agriculturally oriented, dependent upon a natural resource, or part of an appropriate expansion of an existing industrial use. A sand and gravel extraction operation is considered "mining and quarrying," which is an industrial use. The Wichita/Sedgwick County Comprehensive Plan indicates that industrial type uses such as sand and gravel extraction are appropriate in rural areas where the natural resource is located. The proposed two-year extension of the operation of the sand and gravel extraction operation is a result of the current slow economy. The proposed extension of the operation of the sand and gravel extraction operation does not change the character of the subject site and as such is not out of conformance to the adopted or recognized Comprehensive Plans or policies.

5. **Impact of the proposed development on community facilities:** The proposed two-year extension of the operation of the sand and gravel extraction operation will extend heavy truck traffic on 73rd Street North, a non-section line sand road maintained by Park Township and the applicant. However, the current maintenance arrangement seems to have partially addressed the original traffic concerns.

BILL LONGNECKER, Planning Staff presented the Staff Report.

ALDRICH asked when the photos were taken.

LONGNECKER stated they were taken last week.

ALDRICH asked about the requirements of approval dating back to 2003, requiring the applicant to apply a dust control agent on the gravel road and stated it was also recommended on page four of the report, item 6, that the applicant will apply the dust control agent at a rate and frequency that will provide dust control on the plant drive and on 73rd Street North from the entrance to Ridge Road. The initial application rate and schedule would be based on a written recommendation made by an experienced supplier of an annual maintenance cycle along with a letter from the supplier stating that the recommended annual schedule be provided to the MAPD, County Public Works and Code Enforcement prior to April 1, 2008. He asked if that letter been provided with the recommended rate of application.

LONGNECKER stated that he has not found the letter and he asked Public Works for the letter. The applicant might be able to provide the letter, but at this point he has not found the letter.

RUSS EWY, BAUGHMAN COMPANY, P.A. (AGENT) stated that the application arises due to the slow construction period and the amount of aggregate being extracted has slowed to a point that the applicant is asking for the time extension in order to complete the final excavation of the site. There is no need to expand the operation, just simply to finish what has been started with the operation. The two primary issues the application is facing are dust control measures and truck traffic. Those are the themes that will be repeated during this hearing. Dust control is center to at least one question already. We feel we have the ability to provide that letter that's outlined in condition number six to staff prior to the County Commission hearing on this application. We are also trying to work with public works regarding the dust control and the traffic numbers on 79th Street. As we've stated, there is a balance between the amount of traffic this site generates. The original condition stated that these particular operators provide the township maintenance crews with free aggregate for the maintenance of the road

as well as this supplementary dust control agent. It is his understanding from their transportation engineer that it is a very difficult thing to do in controlling dust in any fashion. In this circumstance, one can apply these chemicals, and once the road is graded, the effectiveness of the chemical is deteriorated. It's a dirt road, there will be dust. As far as the truck traffic, there has been a dramatic decline in the amount of production and the rate of production at this site, which has corresponded to the reduction of truck traffic. He believes some of the neighbors in their protest letter stated that there were 100 plus truck trips on this segment of road. He stated that Mr. Burst of the County Public Works will provide traffic count data that is dramatically less than that number. He believes that the numbers are closer to thirty to forty trips a day attributed to the operation. He stated the potential of rerouting the truck traffic would not be feasible by adding an extra two miles to Ridge Road. He stated that this would only move the quote-unquote problem to people who are not represented here today. He believes that there would be certain unfairness to that condition if that were to be entertained further. He stated that the planner stated that the sand pit to the north necessitated the need to pave a 77th Street from its entrance to Ridge Road. He stated that is true but that sand pit is approximately eight times larger than this sand pit and its life expectancy is tremendously greater, the operation of that plant was going into the decades, and so it behooved everyone affected that the road be paved. I know that the citizens that are here today will request you to require the applicant to pave the road, but again the length and severity of the operation from this point until its closure would not make that request feasible. It's going to take some time to finish the operation; the equipment will need to be moved around in order to complete the operation. Although we do not have much more aggregate to pump, the time required to move the equipment will take some time.

ALDRICH asked if the agent had a copy of the required letter from the past application.

EWY stated he did not have a copy and he also asked Mr. Borst if he is familiar with it and he says he has not seen the letter and most likely the letter would have went to Jim Weber who is currently out of town. He said to be honest he could not produce the letter, but the applicant has stated that there has been a letter from the supplier of the material. There was also discussion about a schedule being established on record with Public Works, and the same answer applies to that. Obviously that was an existing condition and remains a condition and I can assure you with the attention of this that Code Enforcement as well as Public Works that the letter and schedule submission will be accomplished.

ALDRICH stated he was curious whether or not that was required and even if the condition was considered to begin with.

EWY asked whether he meant if the letter was provided or considered.

ALDRICH stated either or. Considering it is one thing and actually providing and following through with a requirement. It's spelled out right here whether that was done. He said his point is whether the required letter was done or was it ignored.

EWY stated he did not know as the agent for this application.

DENNIS read that a condition stated that the applicant should notify County Code Enforcement within 10 days after each application. Has that been done in the past?

EWY stated he knows that it's been done in the last application which would have been July 5th of this year, previous applications he did not have the answer to that. That would be a Code Enforcement question.

DENNIS stated that there is no record of you complying with that. One other question was that the reason you don't want to pave the road is because of the time frame, however if you look at the case history on this, the pit was suppose to cease operation in 2003 and it keeps getting extended, so he didn't know if their justification for not paving really holds much water.

JIM MEYER, WEST 73RD STREET NORTH gave a brief history of the past applications. During CON2003-32 road maintenance was discussed and there was a concern on who would maintain the road and supposedly the applicant was supposed to get with the County Engineer to come up with a plan. CON2007-44 conditions did address dust control and that whole meeting was mostly about dust control, if you look at that agenda. During CON2009-36 hearings, Gronniger stated that the road has only been treated three times since the dust control requirement was put on. The last dust application was placed after CON2007-44, that's when the conditions specified the dust application. He did not believe that there has ever been a procedure for the dust control. The only time anything has been placed on that road is when people raise a fuss; then they come down and put a dust application on the road. That was his opinion. He stated that there is an immense amount of traffic on the road; mostly by big trucks that create the majority of the problem. Smaller vehicles do not grind the rocks into powder. Eighteen wheelers do, with a minimum of 30,000 pounds. He didn't want to put Kansas Paving out of business. He just feels they need to live up to the agreement that was in CON2007-44 like it's spelled out. He stated that it is obvious that the dust control has not been properly maintained and, therefore, they are in violation and subject to termination. He does not want to do that. He does not think people have an issue with the trucks going up and down the road; he believes the issue has always been dust. He stated that the issue can be fixed if they continued to put the application on the road and he noted the last application lasted around a month. He said that everyone that signed the petition lives in the country and realize that there is dirt out there; it's the constant grinding of the road into powder.

FARNEY asked the speaker if he had notified County Code Enforcement.

MEYER stated he had several times.

FARNEY asked how many times he had called since 2007.

MEYER stated he wrote a letter to Longnecker a couple times and emailed him a couple of times and called him a couple of times.

FARNEY asked if he had called Code Enforcement, the folks who enforce the regulations.

MEYER stated that he had never called them about the road. He called about the continuation of the pumping of the sand pit when they continued pumping after their time had come up on June 16th. He stated he had never called them and that all his conversations had been with Longnecker.

KLAUSMEYER asked the speaker if the treatment they had just done was just now wearing off, which has been around a month.

MEYER stated that it has been about a month and it depends how much truck traffic runs down the road and it also depends on rain since rain negates the effectiveness of the treatment.

KLAUSMEYER asked if it has been normal truck traffic the last month or less.

MEYER stated that there has been less big truck traffic this last month. At the same time the conditions have been extremely dry, so whatever they put down the last time has been doing a pretty decent job. It has lasted a month and is now beginning to dust again. Everyone is in favor, and they do not want to stop the operation or the trucks, they just want to be able to put their kids outside and plant a flower without it dying. He didn't think that was too much to ask and that when CON2007-44 was established and Kansas Paving signed up for that, then it is their obligation to follow through to make sure they do what is suppose to be done.

VAUGHN CALLAWAY, NORTHWEST CORNER 73RD & TYLER stated he first wanted his name taken off the petition that he signed because it did not originally have the attachment that stated that this was a petition against Kansas Paving unless they meet two requirements. He stated that he would like to have this pit completed and he does not oppose the operation. He stated the dust is an issue and it is an issue all the way down the road, but he said the biggest problem is the lack of maintenance on the road compared to other areas. Since April 14th, when the tornado came through, the road has been graded five times and it has become a total washboard and it needed some service. Mr. Gronniger has offered materials to put on the road and that offer has been declined. He was not opposed to it. He chose to move out into the country so he could do with his property without somebody telling him what he could or couldn't do and they are surrounded by pastures and a couple of camps that both attract a lot of traffic as well. The trucks are bigger, but overall there is a lot of traffic on this road other than the trucks.

FRANKLIN LACEY, 9555 WEST 73RD STREET he stated he has lived at this location for forty years and he has no axe to grind against anybody. He stated the dust is a problem. He stated that the previous applications have the same issues as this current application, the road is dusty and it's a health issue. He stated he wishes he could solve the problem but he can't. He stated that this is not personal; he has met Mr. Gronniger and thought he was a neat guy. He understood wanting to keep the sand pit open because of money, but at the same token the dust can be so bad at times that it is hard to see while driving down the road. He stated that there are also two campgrounds along the road that at times he has seen around 150 cars at the Presbyterian campground and those cars come up that road. He stated that Ridge Road was just recently paved from the Sedgwick County line to 53rd Street and currently 73rd Street has a large hole at the corner with Ridge Road. When the trucks turn at that location, they dig that hole out deeper. He stated that he asked the man that was grading the road the other day if they could do something about the hole and the other man said he couldn't. He stated all the other driveways coming off Ridge Road got nice new aprons during the repaving, but 73rd Street did not. He stated he has seen two accidents at the intersection because the hole makes people go closer to the center of the road and the trucks turning in hit the other vehicle.

VALERIA ALBRICK, 7401 NORTH TYLER ROAD stated she appreciated a previous comment regarding the amount of time given to complete the operation. She stated that it was supposed to be two years and it's been continually extended they are now far beyond the original time frame and now they are dealing with another two year possibility. She also stated the hole at the intersection is dangerous because it causes the driver to pull forward further, in the center of 73rd Street. She stated that she would welcome a traffic counter for a year along the road because she feels there is significantly less traffic on the road when the counters are out there.

SUZANNA CALLAWAY, 7349 NORTH TYLER ROAD stated she has lived out there for forty plus years and she knows all her neighbors. She welcomes the Gronnigers and the lake the pit is creating because when it's done she will get to use the lake. She stated that there are some issues with the trucks and the time extension, but they can't leave it like it is. She stated the pit will need to be completed, regarding the shoreline and other aspects of the operation. She stated she was on the petition and she signed it under false pretense. She said someone knocked on her door and she visited with the person and all she saw was a clipboard with a blank piece of paper that had some names on it. She stated the discussion was on maintaining the road and she feels that the township does not do nearly enough to maintain that road. She mentioned some parts of the Township get maintained up to three times a week and they are lucky to get it once a month. She stated that the issue is more with the Township and the Gronnigers have even offered the Township material for the road, but the Township goes elsewhere to buy the material and then complains they do not have enough material to fix the road. She feels that there is miscommunication and feels that instead of fighting each other that they should all get together and work at getting the Township to fix and maintain the road. She feels the Gronnigers want it done as bad as anyone else. She stated in regards to the dust, she lives in the country for forty years with two camps and hundreds of cars and truck and the winds. She stated that she has had at least a half an inch of dust and dirt in her window sills from the fields and wind. She stated that's what they have to deal with out there, that's part of living in the country and a choice they make by living out there. She feels with the trucks there or not, the dust and dirt will always be a problem.

MITCHELL asked **CHAIRMAN FARNEY** if they could hear from the Traffic Engineer from County Public Works regarding the treatment process.

MARK BORST, TRAFFIC ENGINEER FOR SEDGWICK COUNTY PUBLIC WORKS stated that Mr. Mitchell has way too high estimation of his knowledge to talk to the actual chloride treatments to the road itself. He stated that the agent is correct in stating that it is a difficult process and as you work the road you degrade the ability of that chemical treatment to work and that it probably needs to be applied on a regular basis and he does not have any knowledge regarding the correspondence between the applicant and County Public Works or Code Enforcement so he cannot really address that particular item.

DENNIS asked about one of his statement regarding having to be treated on a regular basis and does he have any idea what that interval might be.

BORST stated that it would be tied to maintenance frequency and precipitation. Due to the weather, a lot of the county roads are not being maintained. It is tough to maintain an unpaved road, not an excuse, but a reality. He feels that the chemical treatment would probably have to be redone maybe every two or three times the road is bladed. It also depends on the amount of traffic. Heavy commercial traffic would affect it more than just regular vehicles.

DENNIS stated that the reason he asked the question was that the petition folks are asking for a bi-monthly treatment. He asked if that would be excessive and what would be a compromise.

BORST stated that bi-monthly may be reasonable at certain times of the year and excessive other times of the year. He stated that some have said the last treatment has lasted a month and that's not surprising. He stated that the traffic counts would suggest that this is not a high volume road with around 220 vehicles a day on the road for a two-way total and a third of that total would be the large trucks, so you

are looking at about 40 trucks a day going in and out with a total of 80 trips. Depending on the condition of the road it can create the dust and when you start putting a lot of aggregate on the road it will dust fairly significantly, it just part of the nature of the beast. There is just a lot of dust off the initial dumping and the working of the material itself. He stated that an option would be to work some into the top six inches of the road bed itself so long as it is maintainable with the blade. He stated that the frequency really depends on weather and maintenance.

ALDRICH asked if three applications in five years was any control.

BORST stated that no, that is not very much.

MITCHELL asked **CHAIRMAN FARNEY** is they could hear from County Code Enforcement.

BUD LETT, INTERIM DIRECTOR OF COUNTY CODE ENFORCEMENT stated that from what he has in the files he does not have any records of the treatment applications being applied.

MITCHELL asked if there are any records of complaints.

LETT stated that he was not sure since he can only speak on what has happened since last January when he has been in this position.

MITCHELL asked the **COUNTY COUNSELOR ROBERT PARNACOTT** regarding an administrative adjustment which extends the permit time period from December 3, 2011 until now.

PARNACOTT stated that staff may be better to respond to the case history, but the administrative adjustment was just intended to be a short several months. He stated that the excavation permit ran through June of this year and when they wanted to continue excavating, pending this extension, they needed another administrative adjustment to bridge the gap. He stated the adjustment runs from June until the resolution of this case.

MITCHELL asked if it would be possible to extend it again via the administrative adjustment to give the enforcement agencies and the applicant a time to work out a schedule of maintenance and dust control.

PARNACOTT stated the adjustment is limited to a minimum or minor adjustment to the terms of the existing conditional use. He said we felt that the extension from June to September was a minor adjustment and would qualify under the administrative adjustments in the code and if you go beyond that period it may become a question whether it's no longer a minor adjustment. The adjustment is not in front of this body and has been granted. The administrative adjustment is in place until the resolution of this proceeding. He stated that if for some reason the commission does not approve the case and it goes to the Governing Body and the Governing Body doesn't approved the extension, they could come back for another minor adjustment perhaps, but it would not be for a very long period of time.

RICHARD GRONNIGER asked how much time he had to talk and was informed he had three minutes. He gave some history on how he got with the Township and how the Township told him that they were going to come out and cut ditches and build up the road while maintaining the road. He stated, as his neighbors have stated, this maintenance from the Township has never been done. He said regarding the treatment, that the road has been treated every year and the entrance has been treated at

least twice. He also said it is not true that it has never been treated. He also stated that about 80 to 90% of the people at the meeting today are west of the entrance to his site, and that they don't see the dust, they don't see the trucks and also don't hear the trucks. He stated that the people were discussing a hole at 73rd and Ridge. He stated that hole has been there a long time and people are just content to let it be there and watch it. He said he has actually called about that hole and talked to the people when they were paving Ridge Road, and they still wouldn't do anything about it. He doesn't know where to go from here but it is a Township problem. He stated they do not maintain the road and where he lives, they maintain the road 3-4 times a week. He stated you rarely see a road grader on in 73rd Street.

ALDRICH stated that he mentioned that it was a Township problem. He said that part of the approval for the cases and the extensions reverts back to having to give an initial application rate and application schedule based off a written recommendation by an experienced supplier on an annual maintenance cycle. He asked if the applicant has done that process and was it ever turned in to the Planning Department, Public Works and Code Enforcement?

GRONNIGER stated that he thought that was up to Jim Weber and Code Enforcement to keep track of stuff like that.

ALDRICH stated that it's not.

GRONNIGER stated that he doesn't do that. He stated that the Hackers do it, they own the business that's pumping the sand and to his knowledge they ask the guy how long it lasts and put the application on.

ALDRICH asked to his knowledge has anyone ever got the requirement letter and the schedule for application for dust control.

GRONNIGER stated that he never asked for it or seen it.

ALDRICH asked if he knows how the hole at the intersection was formed.

GRONNIGER stated there is an irrigation system that splashes the road at that location and eats the road out.

DENNIS stated that one of the requests on the petition was to blacktop the road or to put a bi-monthly treatment of dust control on the road, would you agree to a regular schedule of dust control agent on that road?

GRONNIGER said he couldn't agree to it and that he would have to ask the people who are operating the sandpit. He stated that whoever they are buying the chemicals from tells them how often it needs to be applied and they have been doing that.

DENNIS stated that one thing they heard from the county was that they needed a regular application of it and they have requests for some kind of regular application. He stated that they are requesting the commission to approve something and are you able to give us some kind of agreement that you would do some kind of regular application of dust control measures?

GRONNIGER stated that they have been doing it how they recommended.

DENNIS stated that they don't have any proof of that and as a matter of fact they got a lot of testimony to the contrary, so that's why he was asking.

GRONNIGER stated he didn't know where the paperwork is at and it wasn't his job to keep track of all the paperwork.

DENNIS asked if he didn't think he had any responsibility to agree to any type of a regular application of dust control.

GRONNIGER stated that they have been doing a regular application.

DENNIS stated he didn't have any information other than his word.

GRONNIGER said that they could probably get them the paper work of when it's been done, he was sure they got that.

TERRY HACKER said he wanted to address the treatment of the road. He said that basically when they started, Mr. Weber required a letter from the manufacturer of what to do, and that letter has been supplied to Mr. Weber and he has it on file. He stated the requirement is a one year treatment and the issue seems to be the Township not grading the road properly. He said when they blade the road they blade it to one side and wipes the treatment off and we have tried to address that and talk to them about it, but it has been totally in vain. He stated that they told the Township that if they left the treatment on the road then it would perform, and that seems to be the issue. He stated that they are all in the same boat because they want the road less dusty as well because it's not good on their equipment coming and going, but they are not winning on that issue with the Township. He said that it was required to be treated one time per year, which they have done and the Township could use bullet teeth on their blade which would leave the material in place and level it and fill in all the holes instead of blading it to one side and blading it back. They leave it in the wind row and they blade it back across and he thinks the treatment dissipates in that blading process because it's not per manufacturers specifications. He stated that appears to be the main issue at hand. He wanted to address in regards to Mr. Meyers, he said that Mr. Meyers was up here a few years back when they moved in. Mr. Meyers stated the road was not passable when it rained. He stated that now since they worked on the road and the Township worked on the road, the road was now in very good shape and passable, better than it has been since he has lived there. He stated that Mr. Meyers does not live on that stretch of road between Ridge and Tyler, but he passes by that road by choice, he has other routes home yet refuse to take them.

DENNIS asked if they do have the letter that states an application of one time a year or did he miss something.

HACKER stated yes and Mr. Weber has that letter on file that was required of them. He stated that the letter specified the requirements and they have followed them.

DENNIS asked if it said one time a year.

HACKER stated it said one time a year.

MITCHELL stated he was up there today and he has never seen that part of the road look better and asked what they put on there today as treatment or has it been watered recently?

HACKER answered that has not been watered recently.

MITCHELL asked if it has been watered in the last week or two.

HACKER answered that not unless it's rained.

MITCHELL stated that it hasn't.

HACKER said he doesn't believe it has.

ALDRICH asked if it would be neighborly that once that is graded, that since they are utilizing that road for their business, to maybe look at treating that road at least once a month instead of once a year to keep that dust control and doing something that would help appease the existing property owners. Also, he stated that the applicant gave a copy of the letter to Public Works, but what about the Planning Department and Code Enforcement.

HACKER stated that the permit required them to give it to Weber, which they did do, and they follow it as they were required. Regarding the once a month, the cost of seven to nine thousand dollars plus to treat that road is cost prohibitive and the issue is the township and how they blade the road and how they don't pay attention to the procedures. He believes they are doing everything right and the Township is doing it wrong.

ALDRICH asked what chemical was put down on the road.

HACKER stated it was calcium chloride.

KLAUSMEYER stated that this is completely different from what everyone else is talked about, he asked about the speeds of the trucks, he realizes they're big trucks and that it's hard to pick up speed for $\frac{3}{4}$ of a mile or whatever, but coming off of Ridge Road is another story. He asked if the speed makes a difference on the dust.

HACKER stated that speed would make a difference on the dust but that they tell their drivers to keep the speed low on the road, because we want to take care of our trucks as well and out of respect for the neighbors.

KLAUSMEYER stated he is right, that the speed would make a difference and it's probably not a problem leaving the plant but coming back it might.

PARNACOTT stated that he has just seen the copy of the Administrative Adjustment and he assumes by the wording that the Administrative Adjustment extends until final action is concluded in this case. He stated a short term deferral of action today, particularly if it was for a definite amount of time, would continue to allow the Administrative Adjustment to stay in place, pending any resolutions of any issues or additional information the commission might require.

MITCHELL stated that it is unfortunate that Mr. Weber isn't here today because what he would like to do is ask for a deferral to give the applicant, the neighbors and the county time to work with the Township and see if there is some kind of regular schedule that all of them can agree with and if that could be done, he would like to see this case come back to the Planning Commission for approval.

SCHLEGEL stated that if he wants to do that then do it to a time certain. He stated that we do have people here from County Public Works and Code Enforcement and if that's the nature of your action today then they can carry that message back and get the meeting setup and try to get something resolved

MITCHELL asked if he could get some idea of reasonable time.

EWY said he heard from the operators 90 days, but he doesn't know the schedule and wondered if there was a September 6th MAPC meeting and a September 20th MAPC meeting that would push it out there a little ways. He said he heard something about a September resolution earlier and if this would proceed in the normal course of action, the County Commission would hear this in early September, so those would be the two planning dates that they would be willing to entertain.

SCHLEGEL stated he thinks it should be a short time frame because from the testimony heard today, there should be a sense of urgency about getting this question resolved. He stated that 90 days would be way to long, probably try to get it done in the next 30 days would be a better time frame.

MITCHELL asked when the second meeting date in September is.

SCHLEGEL stated the 20th.

MOTION: To defer action until September 20th at which time all the owners and agencies of the County and Township will to come to an agreement to provide a reasonable level of care and maintenance.

DENNIS stated he didn't have a problem with the motion but he would like to have a copy of the letter that Mr. Weber has on file as part of their package.

AMENDED MOTION: To defer action until September 20th at which time all the owners and agencies of the County and Township will to come to an agreement to provide a reasonable level of care and maintenance and to provide a copy of the maintenance and schedule letter that Mr. Weber has on file to the Commissioners.

MITCHELL moved, **ALDRICH** seconded the motion, and it carried (7-0).

NON-PUBLIC HEARING ITEMS

- 8. Case No.: DER2012-06** – Request for the MAPC to establish September 6, 2012, as the date for a public hearing to consider amendments to the July 9, 2009 Edition of the Wichita-Sedgwick County Unified Zoning Code, as amended, dealing with: Section III-D.1, Principal Use Regulations Schedule; Section III-D6.b, Supplementary Use Regulations and Section IV-E, Home Occupations, including codification and other amendments as identified.

BACKGROUND: DER2012-00006 is a request for the MAPC to establish September 6, 2012, as the date for a public hearing to consider amendments to the July 9, 2009 Edition of the Wichita-Sedgwick County Unified Zoning Code (“UZC”), as amended, dealing with: Section III-D.1, Principal Use Regulations Schedule; Section III-D.6.b, Supplementary Use Regulations and Section IV-E, Home Occupations, including codification and other amendments as identified.

Metropolitan Area Planning Department (MAPD) staff was requested by the Sedgwick County Board of County Commissioners to review regulations dealing with rural home occupations found in the UZC. A four person citizen’s committee composed of Charlie Peaster, John Daley, Max Weddle and Joe Johnson assisted with the review. MAPD and County Law staff met with the citizen’s committee on approximately six occasions. Based upon comments made by the committee, a number of amendments to the UZC, primarily dealing with rural home occupations found in Article IV, Section IV.E, were drafted. The only proposed clarification to non-rural home occupations is found in Section IV.E.3.g, which makes it evident that inventory produced by employees of a home occupation can be legally sold. The current language can be interpreted to mean that a home occupation can have employees that produce inventory but that inventory made by employees cannot be sold on the premises. The proposed amendment removes the possibility of that interpretation.

Some of the recommended modifications to Article IV, Section IV.E are: a) clarification that there are two types of home occupations – home occupations that are allowed in any residential district regardless of city or county location and rural home occupations that are only allowed in the county. Rural home occupations are those uses that would not be appropriate on urban scale lots, such as “animal care, general and limited” or “contractor storage” or a “machine shop” but are generally considered to be appropriate on larger rural tracts, subject to certain development standards (Sec. IV-E). b) Allow rural home occupations located in the SF-20 Single-family Residential (“SF-20”) and RR Rural Residential (“RR”) districts to have the equivalent of four full time employees by right instead of only two employees (Sec. IV-E.3.f). c) Clarification that products made by employees of the home occupation may be displayed or sold on the premises (Sec. IV-E.3.g). d) The addition of “tattooing and body piercing facilities (County)” to the list of permitted home occupations (Sec. IV-E.5.j). e) Reduction of the minimum lot size requirement for a rural home occupation from 20 acres to two acres (Sec. IV-E.7.a). f) Reduction from 600 feet to 40 feet the required separation distance between a rural home occupation and a residence located off-site that does not operate a rural home occupation (Sec. IV.E.7.b). g) Outside storage would be required to be 20 feet away from a property line or outside of required building setbacks, instead of a minimum of 200 feet (Sec. IV-E.7.d). h) Rural home occupations are permitted to have the equivalent of four full time employees by right, instead of being limited to two employees (Sec. IV.E.7.e.). i) Rural home occupations that cannot meet one or more of the rural home occupation development standards but have two acres may apply for a Conditional Use (Sec. IV.E.7.h). j) Clarification that the parking of one commercial vehicle that exceeds 26,000 pounds, owned by the occupant is a permitted rural home occupation (Sec. IV-8.l) and the addition of lawn care service, truck garden, firewood sales, tattooing and body piercing facilities and uses determined by the Zoning Administrator to be similar in character to other listed rural home occupations are permitted (Sec. IV.E.7. (q-t).

CASE HISTORY: The Unified Zoning Code was first adopted in 1996, and has since been amended on a few occasions. Prior to 1996, the City of Wichita and Sedgwick County had separate zoning codes. The 1996 Unified Zoning Code created the first set of nearly uniform land use regulations for the two local governments.

CONFORMANCE TO PLANS/POLICIES: The *Wichita-Sedgwick County Comprehensive Plan Preparing for Change* contains the goal to encourage orderly growth in order to meet future demand while considering cost to tax payers, developers, the environment and the community as a whole (Land Use-General Goal I). In recent years home occupations have become an increasingly significant segment of the City's and County's land use mix, and it is important to provide opportunities for an increasing array of home occupations in a manner that protects the essential characteristics of low-density residential zoning districts.

RECOMMENDATION: Based upon information available prior to this meeting, planning staff recommends that the request to establish September 6, 2012, as the public hearing date to consider amendments to the Unified Zoning Code be APPROVED.

DALE MILLER, Planning Staff presented the Staff Report.

ALDRICH asked what the reasoning was for this, did something occur?

MILLER stated that it would probably be best to get one of the citizens to explain their rationale.

CHARLIE PEASTER stated he was one of the four citizens involved in this. He stated that they were asked by Sedgwick County Commissioner Richard Ranzau to investigate the home occupation. He said part of the reason for this is that several years back when Commissioner Parks was County Commissioner we came with a proposal to change the zoning code book and Sedgwick County turned it down and he created a committee to look at the unified zoning code book and that's what we did. He stated in this regard here that if you look at the code book it's conflicting and what we did was look at the wording in the code book and these before you are the recommendations that were made in regards to the home occupation. He stated that if you go to the code book and look at it, it is conflicting and that's what they tried to clean up.

FOSTER said he wanted to give staff a heads up regarding the kinds of questions he may have, because he knows that this is just to schedule a public hearing, but at looking at this it reminded him that this commission once was asked to look at changing the distances for car wash blowers recently. He stated the commission was not given sufficient reasoning behind that change to the code and that was then disapproved by this body. He stated that if you look at some of the numbers being proposed, you are looking at more than ten times the change in terms of distances and things. This is even beyond what that other particular request was. He asked what limitations would be placed on requirements for display in the rural area and another one would be relative to the four full time employees. He wondered how independent contractors would be treated in that situation and also how seasonal employees would be treated. He asked when they receive the information on this case he would like to see the actual wording that's going to be put into the zoning code.

MILLER stated he will provide the commission with a delineated copy that will show the words that will be replaced underlined with the new words.

FOSTER reiterated that he wasn't looking for answers today but he was concerned that these are not within the intent of the regulations especially as they stand now.

DENNIS asked if this should go to Advanced Plans first before we establish a public hearing.

MILLER stated that would be with your option to refer it to them and then we could work out a schedule and get it there between now and September 6th if that's the designated public hearing date.

MOTION: To establish September 6th as the Public Hearing date to consider amendments to the Wichita-Sedgwick County Unified Zoning Code and request the amendments go before the Advance Plans Commission before the September 6th Public Hearing Date.

MCCAY asked when it goes to Advance Plans he would like to acknowledge the fact that the Advance Plans should give a recommendation back to the MAPC.

ALDRICH stated he was going to request the same thing.

DENNIS moved, **KLAUSMEYER** seconded the motion, and it carried (8-0).

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9. **Case No.:** Conformity of the 2013-2017 Sedgwick County Capital Improvement Program with the Wichita-Sedgwick County Comprehensive Plan.

Background: On July 19, 2012, the Advance Plans Committee received a presentation on the proposed *2013-2017 Sedgwick County Capital Improvement Program (C.I.P.)*. Copies of the proposed County C.I.P. has also been distributed to all members of the MAPC for their review.

Analysis: Section 12-748 of Kansas statutes requires a planning commission to review the capital improvement program of its municipality to make a finding as to whether the proposed public improvements, public facilities or public utilities conform to the adopted comprehensive plan. If the planning commission finds that any such proposed public improvement does not conform to the plan, the commission shall submit in writing to the governing body, the manner in which such improvement does not conform.

Staff has reviewed the proposed *2013-2017 Sedgwick County Capital Improvement Program* and determined that the public improvements itemized therein are in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan. The Advance Plans Committee also passed a unanimous motion at its meeting of July 19th recommending that the MAPC find the proposed *2013-2017 Sedgwick County Capital Improvement Program* to be in conformity with the Wichita-Sedgwick County Comprehensive Plan as amended.

Recommended Action: That the Metropolitan Area Planning Commission find the proposed *2013-2017 Sedgwick County Capital Improvement Program* to be in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

DAVE BARBER, Planning Staff presented the Staff Report. He introduced **PETE GIROUX**, **PRINCIPAL ANALYST, SEDGWICK COUNTY BUDGET OFFICE**.

GIROUX reviewed projects including roads, bridges, drainage, and facility upgrades for the years 2013-2017.

MCCAY asked about the K-254 and Kellogg exchange and who will be participating on that, the County and the State and that's all?

GIROUX stated that the City committed on hitting the eastern side of Kellogg and they asked the County Commission to assist on the project. He said that this is only phase one of a four phased project. He said it will take care of the tight loop.

MITCHELL stated that he didn't have any questions but he did write out some comments. He said at the end he complimented the staff on both the presentation and the document they provided, which gives anyone interested specific items of the Capital Improvement Program.

MOTION: That the Metropolitan Area Planning Commission finds the proposed *2013-2017 Sedgwick County Capital Improvement Program* to be in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

MITCHELL moved, **DENNIS** seconded the motion, and it carried (8-0).

Other Matters/Adjournment

The Metropolitan Area Planning Commission adjourned at 3:30 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