

# METROPOLITAN AREA PLANNING COMMISSION

## MINUTES

August 16, 2012

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, August 16, 2012, at 1:30 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Shawn Farney; Chair, David Dennis; Vice Chair, Bob Aldrich, David Foster, Bill Johnson, Don Klausmeyer, John W. McKay Jr., M.S. Mitchell, Debra Miller Stevens, Don Sherman, George Sherman and Chuck Warren. Ron Marnell and Morrie Sheets were absent. Staff members present were: 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, Deputy City Attorney.

1. Approval of the July 19, 2012 meeting minutes.

**MOTION:** To approve the July 19, 2012 meeting minutes, as amended.

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

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## 2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

### 2-1 SUB2012-00020: One-Step Final Plat – GREAT PLAINS BUSINESS PARK 4<sup>TH</sup>

**ADDITION** generally located ¼ mile south of 37<sup>th</sup> St. N. and ½ mile east of Oliver, on the east side of Ridgewood.

NOTE: This is a replat of five lots in the Great Plains Business Park 4<sup>th</sup> Addition including the vacation of an unimproved cul-de-sac. The site has been approved for a zone change (ZON2012-00017) from LI Limited Industrial to GC General Commercial. This site is also contained within Parcel 1 of the Great Plains Business Park Community Unit Plan (CUP2012-00016, DP-326).

#### STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to the lot being platted. The applicant is advised that existing special assessments will be spread on a square foot basis.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the drainage plan subject to additional drainage easements and an off-site drainage agreement with KDOT.
- D. County Surveying requests the location of the 25-foot utility easement since it is not centered on the line dimensioned.

- 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. Access control needs denoted along K-96 Highway and referenced in the platlor's text.
- G. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- H. 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.)
- I. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- J. 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.
- K. 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.
- L. 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.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- O. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

**JOHNSON** asked if the property was down zoned from industrial zoning, right.

**STRAHL** said LI to GC that is correct.

**JOHNSON** said that his question is where this was an industrial park with industrial buildings in it, what happens to those buildings that were going to be next door to an industrial building and now they are not. Landscape comes into effect and all that type of stuff, so if they add onto an existing industrial building they'll have to meet the landscape requirements since the zoning next to the or across the street has changed.

**MILLER** asked **STRAHL** to refresh his memory on the landscape ordinance, the fact that they are zoned GC, that doesn't trigger the landscape ordinance because they have non-residential zoning next door. Or is it the use that triggers...

**STRAHL** said it's the zoning district that triggers the need for the buffer.

**MILLER** said that there wouldn't be a requirement since this is just going to GC.

**STRAHL** stated no.

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

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

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**3. PUBLIC HEARING – VACATION ITEMS**

**3-1. VAC2012-00028: City request to vacate platted sewer easement.**

**APPLICANT/OWNER:** Thomas A. Schmeidler and Joseph G. & Joyce L. Schmeidler Revocable Living Trust, Poe & Associates, Inc., c/o Tim Austin (agent)

**LEGAL DESCRIPTION:** That portion of the triangular shaped platted sewer easement that runs along the south 101.17 – 107.68 feet of the west lot line of Lot 27, Block 1, Williamsburg Addition, Wichita, Sedgwick County, Kansas (see exhibit & legal)

**LOCATION:** Generally located south of 13<sup>th</sup> Street North on the east side of Oliver Avenue (WCC #I)

**REASON FOR REQUEST:** This portion of the platted easement is not needed

**CURRENT ZONING:** Subject property, all abutting and adjacent properties are zoned LC Limited Commercial ("LC"). The subject property has overlay CUP

DP-135

The applicant proposes to vacate a triangular shaped portion of the platted sewer easement that runs parallel to the south portion of the west lot line of Lot 27, Block 1, Williamsburg Addition; see exhibit. The Williamsburg Addition was recorded with the Register of Deeds January 6, 1985. An additional 10-foot wide easement dedicated by separate instrument that runs parallel to the platted easement was recorded with the Register of Deeds, July 25, 1985; FILM 740 - Page 1458. There are no utilities in the described portion of the platted easement.

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

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

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time July 26, 2012, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the described portion of the platted sewer easement and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) The owner's signature must be on the application and petition to vacate, or a letter (signed by the owner) authorizing Poe and Associates as the owner's agent must be provided to Planning prior to the request going to WCC for final action.
- (2) Provide Planning with an approved legal description of the vacated portion of the platted easement on a Word document, to be used on the vacation order and the vacation petition. This must be provided prior to the request going to WCC for final action.
- (3) Any relocation or reconstruction of all/any utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (4) As needed provide all required project plans for the abandonment or relocation of any/all utilities. Provide the approved project numbers to Planning prior to the request going to WCC for final action.
- (5) As needed provide all required easements for any/all utilities. Provide any/all needed easements dedicated by separate instrument, with original signatures, to Planning prior to the request going to WCC for final action.

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

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) The owner's signature must be on the application and petition to vacate, or a letter (signed by the owner) authorizing Poe and Associates as the owner's agent must be provided to Planning prior to the request going to WCC for final action.
- (2) Provide Planning with an approved legal description of the vacated portion of the platted easement on a Word document, to be used on the vacation order and the vacation petition. This must be provided prior to the request going to WCC for final action.
- (3) Any relocation or reconstruction of all/any utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (4) As needed provide all required project plans for the abandonment or relocation of any/all utilities. Provide the approved project numbers to Planning prior to the request going to WCC for final action.
- (5) As needed provide all required easements for any/all utilities. Provide any/all needed easements dedicated by separate instrument, with original signatures, to Planning prior to the request going to WCC for final action.
- (6) All improvements shall be according to City Standards and at the applicant's expense.
- (7) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

**PUBLIC HEARINGS**

4. **Case No.: ZON2012-21** – City zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") for a medical clinic on an elementary school site on property described as:

That part of Lot 1, Henry Roe Cloud Addition, Wichita, Sedgwick County, Kansas described as follows: Commencing at the northwest corner of said Lot 1; thence easterly along the most westerly segment of the north line of said Lot 1, 408.62 feet for a point of beginning; thence continuing easterly along the north line of said lot 1, 196.38 feet to the point of curvature of a tangent curve to the left in said north line; thence easterly along said curve, through a central angle of 13°31'27" and having a radius of 128.33 feet, an arc distance of 30.29 feet to a deflection corner in said north line; thence southerly along a segment of the north line of said Lot 1, 199.56 feet; thence westerly parallel with the most westerly segment of the north line of said Lot 1, 225.85 feet; thence northerly, 196.00 feet to the point of beginning.

**BACKGROUND:** The applicant requests a zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") on a one-acre site along the north property line of the Henry Roe Cloud Addition, home of the Cloud Elementary School. The subject site is located south of 26<sup>th</sup> Street North and east of Salina Ave. The applicant proposes to develop the property with a medical facility in association with Cloud Elementary School. An elementary school is a permitted use under the existing SF-5 zoning; the proposed medical clinic requires a change in zoning. The application area is owned by USD 259 who will maintain ownership of the property.

The medical facility will be opened year round and will serve Cloud Elementary School students, faculty and the surrounding neighborhood. Development on the site will be required to meet screening, building height, dumpster location, landscaping, parking and all other requirements of the Unified Zoning Code. To fit the proposed clinic building on the site, the applicants requested a variance of the building setback along the north property line, reducing the building setback from 20 to eight feet. This variance will be heard by the Board of Zoning Appeals on August 28<sup>th</sup>, 2012. A temporary/portable school building will be removed from the site to accommodate the proposed clinic building and associated parking. See the proposed site plan attached to this report.

Property north of the site, across 26<sup>th</sup> Street North, is zoned SF-5 and is developed with a single-family neighborhood. South and west of the application area is the SF-5 zoned Cloud Elementary School. East of the site is an SF-5 zoned park, community center and swimming pool.

**CASE HISTORY:** The site is described as Lot 1, Henry Roe Cloud Addition to Wichita, recorded in 1977.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Single-family residences
SOUTH:	SF-5	Elementary school
EAST:	SF-5	Community center, park, swimming pool
WEST:	SF-5	Elementary school

**PUBLIC SERVICES:** West 26<sup>th</sup> Street North is a paved, two-lane local street with a 60-foot right of way. All other utilities are available at the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Major Institutional” use. Major Institutional is a category that includes institutional facilities of a significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for the GO General Office (“GO”) zoning be **APPROVED.**

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property north of the site, across 26<sup>th</sup> Street North, is zoned SF-5 and is developed with a single-family neighborhood. South and west of the application area is the SF-5 zoned Cloud elementary school. East of the site is an SF-5 zoned park, community center and swimming pool.
2. **The suitability of the subject property for the uses to which it has been restricted:** The subject site is zoned SF-5 Single-Family Residential, and is developed with an elementary school and associated facilities. The property could continue to be used as zoned.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The screening, lighting, and compatibility standards of the Unified Zoning Code and the landscape street yard requirements of the Landscape Ordinance will mitigate any possible noise, lighting, and other activity from impacting the single-family residences across 26<sup>th</sup> Street North. The elementary school and community center adjacent to this site are compatible with the surrounding residential neighborhood; these institutional uses have existed at this location for many years. The proposed medical clinic is an institutional use similar to the school and community center, it will be significantly smaller than these two existing institutions, and should have a marginal impact at most on the surrounding neighborhood.
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 “Major Institutional” uses. Major Institutional is a category that includes institutional facilities of a significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities.
5. **Impact of the proposed development on community facilities:** Approval of the request should have no impact on community facilities. The proposed medical clinic will become a community facility serving the immediate surrounding neighborhoods.

JESS MCNEELY, Planning Staff presented the Staff Report.

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

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

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5. **Case No.: CON2012-31** – City Conditional Use request for a "nightclub - event center" on LC Limited Commercial zoned property on property described as:

The West 445 feet of lot 1, Northgate Center Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicants are requesting consideration for a Conditional Use for a “Nightclub in the City” with “Event Center” types of restrictions on its availability. The LC Limited Commercial (“LC”) zoned platted lot is located on the northeast corner of 33<sup>rd</sup> Street North and Arkansas Avenue. The applicant proposes to provide a rental facility for special events with the possible consumption of alcoholic and cereal malt beverages and live or DJ music for dancing for patrons; a nightclub in the city; Sec.II-B, 9(b) of the Unified Zoning Code (UZC). Nightclubs are a permitted use in the LC zoning district, but require a Conditional Use when located within 300 feet of “Church or a Place of Worship,” public “Park,” “School,” or residential zoning; Sec.III-D(w) of the UZC. The site abuts a SF-5 Single-Family Residential (“SF-5”) zoned single-family residential lot and is located within 300 feet of an SF-5 zoned USD 259 elementary school and more SF-5 single-family residential development, thus the requested Conditional Use.

Sec-B.4k. of the UZC defines an Event Center as “...premises that are frequently rented out for public or private activities that are not repeated on a weekly basis, and are not open to the public on a daily basis at times other than when an event is scheduled.” If an Event Center is located within 300 feet of a “Church or Place of Worship,” public “Park”, “School”, or residential zoning district it may be considered for a Conditional Use permit in the LC zoning district; Sec.III-D.6w. The site is within 300 feet of a public school and residential zoning. The applicants propose to rent the facility out for special events such as weddings, birthdays, corporate events, business meetings, church and religious events, banquets, etc. (see attached Exhibit A). The applicants propose to rent the facility out Fridays, Saturdays, Sundays and legal holidays. The applicants propose to be open from 8 a.m. to 2 a.m. The applicant proposes no outdoor activities.

The 6,048-square foot vacant facility’s most recently occupied use was a grocery store. There is no screening between it and the abutting SF-5 zoned properties. The facility has doors facing the abutting SF-5 zoned properties. The facility is part of an LC zoned retail strip that includes a tavern/drinking establishment, a barber shop, a retail front, the fraternal organization Elks Lodge and some vacant spaces. This LC zoned northeast corner of 33<sup>rd</sup> Street North and Arkansas Avenue also has a small stand alone hamburger restaurant and a single-family residence. 7.01-acres of the LC zoned corner are not developed. The LC zoned property ends on its east side against the city owned West Chisholm Creek drainage channel. There is paved parking for the site and the applicant will have to meet the city parking standards. The UZC requires one parking space for two occupants for a night club.

The abutting north property is under one ownership, but is split by zoning, with a LC zoned single-family residence on the west portion and the remaining eastern portion zoned SF-5. The dead end residential street Jackson Avenue abuts the rest of the north side of the site. A SF-5 zoned single-family residential neighborhood is adjacent to the northeast side of the site. SF-5 zoned single-family residential neighborhoods are adjacent to its west and south sides. A SF-5 zoned elementary school is located northwest of the site, across 33<sup>rd</sup> Street North and Arkansas Avenue. A MF-29 Multi-Family

Residential (“MF-29”) zoned single-family residential development is located south of the site across Arkansas. LC zoned single-family residences are adjacent to the north and northwest sides of the site. A LC zoned office-warehouse is located south of the site, across Arkansas.

**CASE HISTORY:** The site is part of the west 445 feet of Lot 1 Northgate Center Addition, which was recorded with the Sedgwick County Register of Deeds May 15, 1964. Staff has received calls seeking information or expressing concern about the request.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5, LC	Single-family residences, dead end street
SOUTH:	LC, SF-5	Small restaurant, single-family residences, office-warehouse
EAST:	LC	Vacant land
WEST:	SF-5, LC	Public elementary school, single-family residences

**PUBLIC SERVICES:** 33rd Street North appears to be a two-lane collector street at this location. Arkansas Avenue is a two-lane minor arterial street at this location. All utilities are available to the site. Staff has received calls from residents in the neighborhood expressing concerns about the proposed use.

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

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed night club is located within an existing commercial development, with direct access onto the Arkansas Avenue two-lane minor arterial street and the 33<sup>rd</sup> Street North two-lane collector street. The abutting north property is under one ownership, but is split by zoning with a LC zoned single-family residence on the west portion and the remaining eastern portion zoned SF-5. The unimproved residential street Jackson Avenue dead ends the north side of the site. A SF-5 zoned single-family residential neighborhood is adjacent to the northeast side of the site. There is a paved 20-foot fire lane and utility easement between the site and the north abutting property which offers minimal buffering. There is no screening between the site and the north abutting property

The UZC requires a Conditional Use for a night club when located within 300 feet of “Church or a Place of Worship,” public “Park,” “School,” or residential zoning. The site abuts a SF-5 Single-Family Residential (“SF-5”) zoned single-family residential lot and is located within 300 feet of an SF-5 zoned USD 259 elementary school and more SF-5 single-family residential development, thus the requested Conditional Use. There is a small neighborhood tavern/drinking establishment (bar) located in the same retail strip as the site, thus a similar use is already in the neighborhood. A key difference between the existing bar and the proposed night club is the size of the proposed night club. The proposed 6,048-square foot vacant facility dwarfs the existing bar and as such may increase the chance for it to become a nuisance to the neighborhood, as it could attract a large number of people. The applicants’ proposal to rent the facility out as needed and only on Fridays, Saturdays and Sundays helps reduce the nuisance factor, but the initially proposed 2 a.m. closing time, especially on Sundays is a concern. Another

concern is how to find a business that can successfully occupy this 6,048-square foot vacant facility (most recently a failed grocery store), which in turn could help revitalize an underdeveloped commercial property, which at best may attract local commercial use. The location of this LC zoned property along a minor arterial and collector street may limit its visibility and access beyond the immediate neighborhood.

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

- A. The site shall be in conformance with an approved site plan.
- B. No outdoor entertainment, recreation, food or drink services are permitted on the site.
- C. The facility may be rented out for public or private activities that are not repeated on a weekly basis, and are not open to the public on a daily basis at times other than when an event is scheduled. Days of rental shall be Friday, Saturday and Sunday. Hours of operation 8 a.m. to 1 a.m. Friday and Saturday. Hours of operation on Sunday shall be 8 a.m. to 10 p.m.
- D. The applicants shall comply with all applicable development standards of the UZC, including but not limited to landscaping, parking and screening.
- E. Solid screening shall extend across the abutting unimproved Jackson Avenue.
- F. The applicant shall obtain, maintain, and comply with all applicable permits and licenses necessary for the operation of an Event Center in the City.
- G. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The site is part of an underdeveloped LC zoned property located on the northeast corner of Arkansas Avenue and 33<sup>rd</sup> Street North. The site is part of the 3.21-acre developed portion of the (+) 10-acre LC zoned property. This developed portion of the property is a retail strip that includes a tavern/drinking establishment, a barber shop, a retail front, the fraternal organization Elks Lodge and some vacant spaces in the retail strip. The retail strip is struggling. This LC zoned northeast corner of 33<sup>rd</sup> Street North and Arkansas Avenue also has a small stand alone hamburger restaurant and a single-family residence. A SF-5 zoned single-family residential neighborhood is adjacent to the northeast side of the site. SF-5 zoned single-family residential neighborhoods are adjacent to its west and south sides. A SF-5 zoned elementary school is located northwest of the site, across 33<sup>rd</sup> Street North and Arkansas Avenue. A MF-29 Multi-Family Residential (“MF-29”) zoned single-family residential development is located south of the site across Arkansas. LC zoned single-family residences are adjacent to the north and northwest sides of the site. A LC zoned office-warehouse is located south of the site, across Arkansas.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC which allows a wide variety of retail, office and residential uses. The site could be used as zoned and developed or redeveloped as currently zoned. A concern is how to find a business that can successfully occupy this 6,048-square foot vacant facility (most recently a failed grocery store), which in turn could help revitalize an underdeveloped commercial property, which at best may attract local commercial use.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed night club will be rented for special events only on Fridays, Saturdays and Sundays which help could minimize detrimental impact on nearby property. However the proposed 6,048-sqaure foot vacant facility dwarfs the existing bar (a similar use, but open to the public, every day) and as such may increase the chance for it to become a nuisance to the neighborhood, as it could attract a large number of people. Enforcement of these restrictions may fall outside the hours and days of the City’s Code Enforcement division, which leaves the Police Department as the group that may get the call for enforcement. The Police Department does not operate under the same codes as Code Enforcement. The site needs to meet the code required parking, screening and landscaping standard to further minimize detrimental impact on nearby property.
  
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2030 Wichita Functional Land Use Guide” depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities. A night club limited to a rental special event facility would be in general conformance with the local commercial designation. Also, the UZC requires a Conditional Use for a night club when located within 300 feet of “Church or a Place of Worship,” public “Park,” “School,” or residential zoning. The site abuts a SF-5 Single-Family Residential (“SF-5”) zoned single-family residential lot and is located within 300 feet of an SF-5 zoned USD 259 elementary school and more SF-5 single-family residential development, thus the requested Conditional Use.
  
5. **Impact of the proposed development on community facilities:** None identified.

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

**CHUCK WARREN** asked specifically on the question of security, is there specific wording to that?

**LONGNECKER** said onsite security must be present when the facilities are being rented out.

**WARREN** said that it doesn’t matter where there, because alcohol can be served at any event, then security would be necessary at any event.

**LONGNECKER** stated correct, yes. It doesn’t mean alcohol will be served at all events, but the applicant wants that option to be available for people who rent it out.

**M.S. MITCHELL** asked without the recommendations of the DAB, would the speakers be permitted outdoors.

**LONGNECKER** stated that he wasn’t thinking so, with no outdoor entertainment, recreation, food or drink services, he thought he had that covered, but he has no objection with going ahead and being more articulate with the speakers.

**GEORGE SHERMAN** asked that maybe this is a question for legal, but is a condition for a requirement like security guards something that a zoning case can apply to a property.

**LONGNECKER** said that wasn't a recommendation by staff, but we are looking at a recommendation from the District Advisory Board, which he felt has more discretion than we do. Perhaps legal can answer that.

**JEFF VANZANDT, ASSISTANT CITY ATTORNEY** said that he would have to check on it, but didn't think that there is any prohibition for providing that requirement.

**JOSE VASQUEZ, APPLICANT** asked if the Commission had any question for him.

**SHAWN FARNEY, CHAIRMAN** asked the applicant if he was in agreement with the recommendations for the hours and such?

**VASQUEZ** stated yes he was.

**DAVID FOSTER** asked about the recommendations by the DAB relative to the security requirement whenever the facility is in use?

**VASQUEZ** stated that they planned on having security guards at the premises when it is rented and he has already talked to the police department and they are will to work on having officers in there.

**PATRICIA STEBBINS, 3500 NORTH ARKANSAS AVE.** stated that her biggest concern is the noise level. In the past they had previous things down there in that area where the music played so loud and she is very close to that area that it just goes on and on. Afterwards the traffic going up down, the cars in the parking lot where there are people out there playing around and music and everything. She stated she is very concerned about the noise level that late in the evening for us that live so close to that area and again the traffic, continues traffic up and down, speeding into everything, that's her biggest concern. Thank you.

**FOSTER** asked if the noise is from the cars or is it from the facility itself.

**STEBBINS** said it was from the facility itself. They had something there approximately a couple months ago and the noise was just awful for everybody, especially after 10-11 o'clock in the evening. Then after it was over the traffic going both ways, which they would go north past where she lives, they were speeding and then you would go into the parking lot and with the cars out there with people talking and the beer bottles, you would go up and down the road and find beer bottles and things that people throw out. So it's really inconvenient.

**ALDRICH** asked when she says "they," is it the current applicant?

**STEBBINS** said she really can't say for sure, she knew there was something there approximately six weeks to two months ago that I was just only told it was them, but I could really be wrong. Based on that, if it's anything like that; with the noise; when they open their doors and close them; with people going outside, the music is just terrible because it's so loud.

**CINDY DAVIS, 3386 NORTH JACKSON COURT** stated that her backyard would be up against the street. She stated that the neighborhood is full of children and it's a fairly new community and she

would hope that the Commission would consider safety. There is a lot of traffic, people going through the neighborhood, and she realizes that it's going to be later in the evening, but also the beer bottles and so forth and noise does carry over there. She does not feel that it is very appropriate to have something like that right there so close to their homes. She just wanted to share that.

**LISA LAVARGAS, 3374 NORTH JACKSON COURT** stated that she is Cindy's neighbor and her backyard is also on the street there on 33<sup>rd</sup> Street. She said she fears for the safety of the kids. There have been many nightclubs where we see in the news where there are shootings and fighting and all kinds of stuff, even with security there. She said that she is very afraid of a shooting and one of their houses being hit and any fighting and violence that might happen and our kids being there to witness it. Even if it's late, you always have drunk drivers coming out of the clubs. They could possibly drive into our street and not being in their senses completely and that they could drive into the houses and crash into any of their houses or kids or anything like that. She said she is very concerned about the safety as well.

**VASQUEZ, APPLICANT** stated that they have not been in operation there yet. The place next door that rented for parties, weddings and all that and that is where all that noise is probably coming from. He stated they have not been working out of that site.

**WARREN** asked with the requirements that you not have any outdoor music or any allowed on the property, do you have a plan on how to control the parking on your property and the loud music. He stated that some of these cars have sound systems that are extremely loud and how could you maintain that situation?

**VASQUEZ** stated they will have security indoors and outdoors and keeping that down, and they will not allow any alcohol or beer out in the parking lot. That is their goal.

**FOSTER** asked if he could explain any more about the facility that is adjacent to his site.

**VASQUEZ** stated that it is vacant right now.

**MITCHELL** asked a question to City Legal in regards to the two conditions that were added by the DAB, the speakers and security. How would those be enforced?

**VANZANDT** stated the enforcement of that would be through the Wichita Police Department through the noise ordinance or for the alcohol in public, anything in that nature.

**MITCHELL** asked if that is in effect anytime.

**VANZANDT** stated correct, the difference would be, the level of the noise is always in effect through our noise ordinance whether they have this specific requirement of no speakers outside and that is more specific than what our noise ordinance would allow.

**MITCHELL** asked that the police could enforce the no speakers outdoors.

**VANZANDT** stated that if those speakers were causing the noise to create a violation of the noise ordinance.

**BILL JOHNSON** asked about the club over in the shopping center and if they were exempt or different. He stated that he doesn't know how you would tell whose cars are whose and whose speakers what. He stated that apparently the applicant has no problems with the conditions but he didn't know if it would create problems later when it's not even under his control.

**GEORGE SHERMAN** asked who enforces them having security there. If they have a wedding without security is there a big camera in the sky that tells us that. It seems like a difficult zoning thing to enforce. He assumed it's not something the police could enforce. We could revoke the Conditional Use permit I guess.

**DALE MILLER, CURRENT PLANS MANAGER** stated he assumed it would be like most things where someone would have to call and file a complaint and then OCI would have to figure out some way to proactively check.

**ALDRICH** stated that the City of Wichita just got done redoing, not long ago, the city ordinance governing nightclubs and such and they have really cracked down and made things more enforceable and he doesn't see any difference on this. They will have to have a permit to sell alcohol or they can wind up jeopardizing that if things get out of hand. He stated that is point is that law enforcement does have more tools and teeth than what they had in the past.

**JOHN MCKAY** asked about the hours that the DAB talked about.

**LONGNECKER** stated Condition C on page four of the report states the days of rental on Friday, Saturday and Sunday with the hours of operation 8:00 a.m. to 1:00 a.m., Friday and Saturday, and hours of operation on Sunday 8:00 a.m. to 10:00 p.m.

**MCKAY** asked that they will only be open for three days a week.

**LONGNECKER** stated that they are available for rental three days a week, it does not mean they will be open three days a week just that they are available for rental three days a week.

**MCKAY** said he is going back to what everybody else is asking, how you are going to control that hourly, deal, or whatever it might be.

**LONGNECKER** said that staff recognizes the point that you got two different things going. You got code enforcement, which looks at these Conditional Uses, but the staff report recognizes the fact that these days and hours of operation that code enforcement will largely be absent therefore your next enforcement agency is going to be the police department. He said that one of the things he does on Conditional Uses with bars is that we give notice to the police department, the vice squad, so they can check out the applicant and set in Development Review if they need to on these reports. The two cases you have today received nothing negative from the police, but again, the enforcement will largely fall on the police, but that's the same for any nightclub. Unless they want to pay code enforcement overtime and have them work on weekends and after hours.

**WARREN** stated what he is hearing is if the people that live in the neighborhood feel that the applicant is violating the conditions that are set forth, if it's during normal business hours, they would call code enforcement and if it's after hours then they would call the police department and they would be the enforcer.

**LONGNECKER** stated yes.

**FOSTER** stated he had two questions. He wanted to make sure he understood Condition C; it says the facility may be rented out for public or private activities. Is that the only time the facility is opened, Friday, Saturday and Sunday?

**LONGNECKER** stated that's when the facility is available to be opened.

**FOSTER** asked if it's not going to be opened at any other time.

**LONGNECKER** stated correct.

**FOSTER** said for his second question that he couldn't recall any fencing on the north side of the property, near Jackson Court.

**LONGNECKER** showed a picture showing the area looking towards Jackson Street. He stated there is a twenty foot wide alley and utility easement that runs between the site and the abutting property. He stated that there is no fencing and no screening and that we are looking at getting some screening along the north side of the site. There will be some screening that will have to be in place. He stated that one of the interesting things about this site is there is SF-5 zoning to the north along with LC zoning where there is currently a single-family residence. The screening would only have to screen the SF-5 zoned property and not the LC zoned residential homes.

**FOSTER** asked about screening along the south side, along the north side of 33<sup>rd</sup> Street?

**LONGNECKER** stated that we are not looking for screening there. He said that he supposes that if we are trying to cut down on headlights going into the residences, you could like at something like a four foot solid fence there to cut down on the light going into residences. Other words, a four foot high fence would be high enough to block out the headlights, basically reduce it to two points of entrance.

**GEORGE SHERMAN** stated that he is sure they have gone through this, but are we okay for parking there?

**LONGNECKER** stated that after looking at it, yeah we are okay for parking.

**MCKAY** stated that he noticed that the applicant is different from the ownership, and all these things that you are talking about are going to have to be done. Is the owner aware of that?

**LONGNECKER** stated that the owner has a copy of the staff report. We called up the owner yesterday. The owner is out of town till next week and the owner signed the application form, so he gave permission to do this.

**MCKAY** asked that on the application form did it say he had to do this.

**LONGNECKER** stated no, but he gave okay for the applicant to make application. Again, Mr. McKay, we made contact with the owner yesterday and we haven't been able to get a response from him.

**MOTION:** To approve, with the addition of the prohibition on an outdoor sound system and adding the requirement of on-site security as conditions as recommended by the District Advisory Board and staff recommendations.

**DENNIS** moved, **FARNEY** seconded the motion.

**SUBSTITUTE MOTION:** To approve without the prohibition on an outdoor sound system and the requirement of on-site security, but keeping the other conditions of the staff recommendation.

**ALDRICH** moved, no second, **SUBSTITUTE MOTION** fails.

**FARNEY** stated he will call the vote on the original motion.

**FOSTER** stated if there was any concern for car lights and things going into the residential area to the south there since that would not have required screening. Is that something that ought to be considered?

**LONGNECKER** stated that the only thing we would look at with screening would be imposing some type of landscaping which would require them to jackhammer out the parking lot.

**WARREN** stated that the difficulty in getting the second motion shows the lack of enthusiasm for this, but at the same time he's not finding any reason to deny it. He stated he thinks the applicant has done their due diligence and staff has done the things that they needed to do, so he's ready to go forward, but his comment to the neighbors would be to know that there are a few things that you could do if the applicant does not follow the rules and regulations. This is one where he holds his nose and votes yes.

**ALDRICH** stated he agreed with what Mr **WARREN**, but his only concern is that we are putting restrictions as far as security on business here, yet there are other shared businesses on the same property and not sure how we can do that.

**WARREN** understood **ALDRICH's** point, but at the same time in an effort to try to protect the neighbors as much as we can and since the applicant is in agreement with security, he would not be interested in doing away with the condition.

**ALDRICH** stated he is not opposed to the application at all, just wanted to make those comments.

**MILLER-STEVENSON** stated she wanted to make a substitute motion approving the request per staff comments, disregarding the additional conditions approved by the District Advisory Board. She stated that we have laws and ordinances in place that can address any issue that comes up. With it being a nightclub, as Commissioner **ALDRICH** stated those laws has been looked at before and police work with owners to train or provide security. She stated that we didn't need to second guess, or try to redirect the police department.

**SECOND SUBSTITUTE MOTION:** To approve per staff recommendations.

**MILLER-STEVENSON** moved, **MCKAY** seconded the motion, and it failed (6-6).

**DENNIS** stated that he will not be voting in favor of the substitute motion for a couple reasons; one is that we frequently put restrictions on outdoor speakers whenever they are in close proximity to residential housing and this is in close proximity to residential housing and he sees no problem on the outdoor speaker restriction. The second part on the security, he understands the concern on how one would enforce that one, but the applicant has already agreed to it and said that they will do it and take care of it and at that point he is almost taking responsibility for everything in that shopping area. So he doesn't see any reason to, he understands what **MILLER-STEVENSON** is saying, but he doesn't support the alternate motion.

**FARNEY** stated he will call the vote on the original motion.

Vote on original motion failed (6-6).

**MILLER** stated that equals a denial unless there is another motion.

**ALDRICH** stated that he would like to have more discussion on it and then see if the vote will change on that because he didn't want to see a denial on this because we are hung up on one or two little issues. He stated he understands the applicant doesn't have a problem furnishing security, but that is something that should be left up to him to do that and the city ordinances governing nightclubs and operations that a lot of time, effort and resources were put on, it gave law enforcement a lot more tools to help do their job and to help protect the residents and other businesses. He stated that it doesn't make any sense to add things or requirements that are already covered under the ordinance.

**GEORGE SHERMAN** stated he thinks he is totally on the opposite side of what Mr. **ALDRICH** was saying. He stated that this is a Conditional Use application and we are here to put on as many conditions on it when we approve it to protect the neighborhood. He said that frankly whether he agreed to security or not, he thought that was a good addition. Friday, Saturday and Sunday night there are places all over town that have noise issues and other issues that police are busy with, he felt that if we can give the neighborhood a little added benefit that there is a security person there onsite, it may enforce some of those issues and it makes a lot of sense to me. He stated that the outdoor speakers are not permitted by code, but if we could add another condition because one of the main things is that it puts some teeth on a condition. He said with a Conditional Use permit that if the conditions are violated they can revoke the Conditional Use, which is item number G on the report. He said it makes sense to have that there and that's why he voted against the first substitute without those added and voted in favor with those added.

**FOSTER** said that he would like to hear from one of the residents along Jackson Court to the current concerns that they would have for the event center going in. Could someone from Jackson Court please come forward from the public and please restate their concerns?

**CINDY DAVIS** stated that noise is a concern even without the outdoor speakers; we are still concerned about the noise if it is a nightclub issue. She stated they are concerned about the safety, because there are so many families and so many small children in the area. She said that she wants to be protected from people coming into our neighborhood. She stated they live on a court so people will speed down our court and there is no way to get out, so they turn back around in our small neighborhood and they drive out. She said she is concerned with the alcohol, trash and everything ended up in our yards. She asked if there were any specific questions.

**FOSTER** said he wanted to get a better understanding. He asked just to confirm, along the north, on those properties on north Jackson Court that there is no fencing.

**DAVIS** stated that they do have a fence along the residential, we have wrought iron.

**DON SHERMAN** asked legal if he had speakers outside of his private residence and they are blasting out loud, police is going to come out and tell me to knock it off, correct?

**VANZANDT** answered yes, if there is a complaint.

**DON SHERMAN** asked if I turn it down and then turn it back up and they come out the second time, they are more than likely going to cite me for something, correct?

**VANZANDT** stated correct.

**DON SHERMAN** said that without any type of special ordinance or anything, that's just the regular noise ordinance.

**VANZANDT** stated correct.

**DON SHERMAN** asked on the security, on the new nightclub ordinance, does it require that security is at a nightclub?

**VANZANDT** stated he did not know for sure and he would have to double check that.

**DON SHERMAN** asked **ALDRICH** if he knew.

**ALDRICH** answered he didn't remember.

**DON SHERMAN** stated that his point is if it's not required, he didn't think they needed to put it on the police to determine if a club needed a security guard or not. That's just a bunch of ambiguity and OCI is not the ones who are going to investigate this because they are going to be off, it's going to be on the police. So basically on the noise ordinance and the security, he thinks it's just a mute issue and we shouldn't have the police determine to try to decipher which clubs or which venues have to have a security guard. He stated they had better things to do than that and with the noise ordinance; it's already

covered by common sense and by the laws that are already on the books. He stated that is why he voted with **MILLER-STEVENSON**.

**WARREN** stated that he appreciated the comments and understood where he was coming from, but the difference is it puts the onus on the operator; if an individual is in violation of the noise ordinance then they could cite the individual and it doesn't cause the owner to be concerned. If someone pulls into his parking lot and is blaring his sounds, the operator is taking on the responsibility to go out and ask them to turn it down and to watch out for the neighborhood or its going to be his operation that's in jeopardy. So he thinks it adds an element that has the operator trying to keep things in line rather than on the police department. The other aspect is the same way with security. If there is a problem this gives the neighborhood the opportunity to call and complain and if they are not living up to that obligation, then the right to operate could be revoked much simpler. He stated he is not a big fan of adding new responsibilities on to the police department but in this case, to try to give the neighborhood a little more breathing room, that's why he is in favor of those conditions.

**GEORGE SHERMAN** stated that this is a Conditional Use request, what Mr. **SHERMAN** is talking about is nightclubs permitted by right on the property. This individual has no right to put one here without getting a Conditional Use and along with that comes some special conditions because of the reason that required the Conditional Use; the nearby neighbors, the church and other things like that. He feels that it is proper and is willing to try a motion.

**FOSTER** said he wanted to make an observation on the speakers. The way he understood the additional condition, if the speakers aren't there then in theory you will not have the noise issue so that's the thought about adding that in because the speakers wouldn't be there to create the noise problem. He is ready to hear Mr. **SHERMAN**'s motion, and he has one as well.

**GEORGE SHERMAN** added that the additional teeth here are that at a home they might fine you, but here, he might lose his operation.

**MOTION:** To approve, with the addition of the sound system and security conditions as recommended by the District Advisory Board and fence screening along the south side of the parking area and staff recommendations.

**FOSTER** moved, motion failed due to the lack of a second.

**JOHNSON** asked legal if the fence could only be put in front of the application space and not the balance of the shopping center, but since the motion failed it doesn't matter.

**MOTION:** To approve, with the addition of the sound system and security conditions as recommended by the District Advisory Board and staff recommendations.

**GEORGE SHERMAN** moved, **WARREN** seconded the motion, and it carried (7-5).

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6. **Case No.: CON2012-32** – County Conditional Use request to allow an Accessory Apartment on RR Rural Residential zoned property on property described as:

A tract in the Southeast Quarter of Section 1, Township 27, Range 3 West of the 6th P.M., Sedgwick County, Kansas beginning 1,325.5 feet West and 415.79 feet North of the Southeast corner of said Quarter; thence North 546.7 feet; thence West 400 feet; thence South 546.69 feet; thence East to the beginning EXCEPT the East 35 feet for road and EXCEPT the North 35 feet for road.

**BACKGROUND:** The applicants are requesting a Conditional Use to allow an “accessory apartment” on a 4.4-acre RR Rural Residential (“RR”) zoned unplatted tract. The tract is located north of 21<sup>st</sup> Street North, along the west side of 219<sup>th</sup> Street West; 2301 North 219<sup>th</sup> Street West. The appraiser’s link shows the 1,923-square foot primary dwelling unit being built in 1998. The applicants have stated that they purchased the property in 2011 and that a 25-foot (x) 25-foot bath house attached to a second, detached garage was part of the site. A 2000 aerial of site shows the bath house – detached garage on the site. The bath house has a full bath, a kitchen, sleeping and living areas, which is defined as a “dwelling unit” in the Unified Zoning Code; UZC, Sec.II.B.4.j. The applicants propose to use an existing bath/pool house, as the accessory apartment to house their elderly parents. The UZC requires an approval of a Conditional Use for an accessory apartment (a second dwelling unit) in the RR zoning district; UZC Sec.III-D.

The site plan submitted by the applicant is an aerial showing the existing development on the site, which also includes a swimming pool located between the bath house and the primary single-family residence. A 2006 aerial of the site shows the pool.

Per the UZC, Sec.III.D.6.a, the Conditional Use supplemental use regulations for accessory apartments are:

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

According to calls received by Planning, the site is part of a group of properties bound to a private restrictive covenant that prohibits more than one single-family residence per property. The applicants have acknowledged this and have spoken with the group about their request for an accessory apartment to house their elderly parents. Staff has not requested, received nor reviewed this covenant. Enforcement of a private restrictive covenant is a civil matter.

The site is located in a rural portion of Sedgwick County, that has a cluster of RR zoned large tract (+4-acres) single-family residences and urban scaled, platted, RR and SF-20 Single-Family Residential (“SF-20”) zoned single-family residences. These single-family residences are built on both sides of 21<sup>st</sup> Street North, with most of them located west of 219<sup>th</sup> Street West, clustered around Dry Creek. The rest are built around an un-named creek located east of 219<sup>th</sup>. The site is not abutting either creek. All of the RR zoned large tract single-family residences are located north of 21<sup>st</sup>. Most of the large tract single-family residences located around the site appear to have been built in the late 1990s through the mid 2000s. Most of the urban scale RR and SF-20 zoned lots and tracts appear to have been built in the mid and

late 1970s. There are vacant RR and SF-20 urban scale tracts/lots. Land around this cluster of single-family residences is used for agriculture with working farms on them.

**CASE HISTORY:** The RR zoned is a 4.4-acre unplatted tract with a 1,923-square foot single-family residence with a 1,613-square foot walk out basement, bath house and attached garage(s). The single-family residence was built in 1998. Staff has received calls requesting information about the request as well as support and opposition to the request. From these calls it appears the applicants are speaking with the neighborhood to reach an agreement on this proposed use.

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	Large tract single-family residences, agriculture
SOUTH:	RR, SF-20	Large tract single-family residences, agriculture
EAST:	RR, SF-20	Large tract single-family residences, agriculture
WEST:	RR	Large tract single-family residences, agriculture

**PUBLIC SERVICES:** The existing house has a private water well and a sewage lagoon. Access to the site is off of the unpaved local residential road, 219th Street West. Less than 400 feet south of the site 219<sup>th</sup> intersects with 21<sup>st</sup> Street North, a paved two-lane County highway.

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

The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling’s hook-up. The proposed accessory apartment is existing (2000) bath house, is built with the same style and materials as the primary single-family residence, is much smaller and similar to the other single-family residential development in the area. The proposed accessory apartment would seem to be the first in the area. The proposed accessory apartment would be served by the same private water well and sewage lagoon as the primary single-family residence. The condition of the accessory apartment being on the same water and sewer inhibits the possibility that it will not be subdivided and sold off.

An accessory apartment is typically viewed as a compatible use to a single-family residence, as long as there is enough land area and services can be provided for the additional dwelling unit. The site being a part of a group of properties bond to a private restrictive covenant that prohibits more than one single-family residence per property makes the request more problematic.

**RECOMMENDATION:** The existence of a private restrictive covenant that prohibits more than one single-family residence per property makes recommendation more problematic and perhaps more costly for the applicants if civil action is pursued. However, staff has typically allowed accessory apartments unless the additional unit would impinge on the use of adjoining properties. A 2000 aerial of site shows the bath house – detached garage on the site, thus the impact on the built character the area will be minimal. Discussions between the applicants and their neighbors have presented the possibility of a compromise with certain conditions that would make the accessory apartment a temporary one.

Therefore, staff recommends that a Conditional Use for a temporary accessory apartment be APPROVED subject to the following conditions:

1. The temporary accessory apartment shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC) for accessory apartments.
2. Record a restrictive covenant to be filed with the Register of Deeds that states; “At the time the applicants, James R. and Catherine G. Marcolesco, sell the subject property (insert legal) to another party, the Conditional Use for a temporary accessory apartment shall be null and void.”
3. The site will be generally developed as shown on an approved site plan, obtaining and conforming to all applicable permits, including but not limited to building, health, and zoning, including connection to water and sewer.
4. The applicants will obtain all applicable permits, including but not limited to building, health, and zoning, including connection to water and sewer
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The site is located in a rural portion of Sedgwick County, that has a cluster of RR zoned large tract (+4-acres) single-family residences and urban scaled, platted, RR and SF-20 Single-Family Residential (“SF-20”) zoned single-family residences.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned RR, which accommodates agricultural uses, low-density single-family residential development and complementary land uses. The site is developed with a single-family residence (1998), a pool and a detached garage housing a of a bath house (2000) with a full bath, a kitchen, sleeping and living areas. This is a second dwelling unit on the site, whose RR zoning allows one single-family residence per property.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** An accessory apartment is typically viewed as a compatible use to a single-family residence, as long as there is enough land area and services can be provided for the additional dwelling unit. The site being a part of a group of properties bond to a private restrictive covenant that prohibits more than one single-family residence per property makes the request more problematic. The proposed accessory apartment would seem to be the first in the area.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2030 Wichita Functional Land Use Guide, Map as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area to be appropriate as “Rural Areas.” The purpose of this category is “to accommodate agricultural uses and rural based uses that are not more offensive than those agricultural uses commonly found in Sedgwick County.” The site lies beyond all small city growth areas.

The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in

character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling's hook-up. The proposed accessory apartment is existing (2000) bath house, is built with the same style and materials as the primary single-family residence, is much smaller and similar to the other single-family residential development in the area. The proposed accessory apartment would seem to be the first in the area. The proposed accessory apartment would be served by the same private water well and sewage lagoon as the primary single-family residence. The condition of the accessory apartment being on the same water and sewer inhibits the possibility that it will not be subdivided and sold off.

An accessory apartment is typically viewed as a compatible use to a single-family residence, as long as there is enough land area and services can be provided for the additional dwelling unit. The site being a part of a group of properties bound to a private restrictive covenant that prohibits more than one single-family residence per property makes the request more problematic. Discussions between the applicants and their neighbors have presented the possibility of a compromise with certain conditions that would make the accessory apartment a temporary one.

5. **Impact of the proposed development on community facilities:** If developed in compliance with the recommended conditions of approval (single water well connected to both dwellings, single sewage lagoon connected to both dwellings), then it should not have any impact on community facilities.

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

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

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

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7. **Case No.: CON2012-33** – City Conditional use request for a "nightclub" - "event center" on LC Limited Commercial ("LC") zoned property on property described as:

Lot 1, Dotzour's Addition to Wichita, Sedgwick County, Kansas.

AND

The South 3 feet of the following described tract:  
Beginning 637.5 feet East and 330 feet North of the Southwest corner of the Southeast Quarter of Section 13, Township 27, Range 1 West of the 6th P.M. Sedgwick County, Kansas; thence West 82.5 feet; thence North 330 feet; thence East 82.5 feet; thence South 330 feet to the beginning.

**BACKGROUND:** The applicant is requesting consideration for a Conditional Use for a "Night Club in the City" with restrictions on its availability. The LC Limited Commercial ("LC") zoned platted lot is located on the northeast corner of Mt. Carmel and Central Avenues. The applicant, the Loyal Order of the Moose, is a fraternal organization that proposes to provide a dinner, dances and a bar for its members and their guest on Thursday and Saturday nights, generally from 7 p.m. to 11. p.m.; see 'Activities'

exhibit for specifics on these two days. Music for the dances will be provided by either a DJ or band. Per Sec.II-B.9.b. of the Unified Zoning Code (UZC) defines a facility that provides the sale, consumption and serving of alcohol and/or cereal malt beverages, dancing for its patrons and music as a night club in the city. Nightclubs are a permitted use in the LC zoning district, but require a Conditional Use when located within 300 feet of “Church or a Place of Worship,” public “Park,” “School,” or residential zoning; Sec.III-D.6.w. of the UZC. The site is abutting SF-5 Single-Family Residential (“SF-5”) zoning on its north side and is adjacent to SF-5 and TF-3 Two-Family Residential (“TF-3”) zoning on its west (across Mt Carmel) and north sides.

The applicant also proposes to have West Coast Swing and Ballroom dancing on Monday and Tuesday nights from 7 p.m. to 9 p.m. The dancing is open to the public and no alcohol will be consumed in the facility. Because the facility is licensed to sell alcoholic liquor and cereal malt beverages the dancing would also be considered a nightclub in the city. Wednesday and Sunday nights are open to the public for bingo, from 6 p.m. to 9:30 p.m. and no alcohol will be consumed in the facility. Playing bingo at this facility is considered “Recreation and Entertainment Indoors (UZC, Sec.II-B.11.a.) and is permitted by right in the LC zoning district. There are no scheduled activities on Fridays.

The 11,597-square foot vacant facility’s most recently occupied use was a grocery store. The facility is part of an LC zoned retail strip that includes a pharmacy. There is paved parking for the site and the applicant will have to meet the city parking standards. The UZC requires one parking space for two occupants for a nightclub. There is no solid screening between the LC zoned subject site and the abutting SF-5 and TF-3 zoned residences.

The proposed use shares property with a pharmacy. Properties abutting and adjacent to the north side of the site are developed as SF-5 zoned single family residences and a TF-3 zoned duplex. There is a paved alley located along the north side of the site, which intersect with Mt. Carmel. There are also SF-5 zoned single-family residences located west of the site, across Mt. Carmel Avenue. Properties located south, east and west of the site, with Central Avenue frontage, are zoned LC and are developed as retails, offices, restaurants, a liquor store, some vacant commercial spots, a convenience store, a donut shop and a drinking establishment – tavern.

**CASE HISTORY:** The site is part of Lot 1, Dotzour’s Addition, which was recorded with the Sedgwick County Register of Deeds August 27, 1957. Staff has received calls seeking information or expressing concern about the request.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5, TF-3	Single-family residences, duplex
SOUTH:	LC,	Donut shop, restaurant, office-ware-house, office, retail, drinking establishment
EAST:	LC	Restaurant, retail, liquor store, convenience store
WEST:	SF-5, LC	Single-family residences, office ware-house

**PUBLIC SERVICES:** The site has access onto Central and Mt. Carmel Avenues. Central is a four-lane major arterial street, with center turn lanes at this location. Mt. Carmel is a local residential street. There is a paved alley located along the north side of the site, which intersects with Mt. Carmel. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” depicts

this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed night club is located within an existing commercial development, with direct access onto Central Avenue a four-lane major arterial street, with center turn lanes at this location. There is a 20-foot paved alley between the site and the north abutting properties which offers minimal buffering. There is no screening between the site and the north abutting properties. Two loading docks use the alley for access.

The UZC requires a Conditional Use for a nightclub when located within 300 feet of “Church or a Place of Worship,” public “Park,” “School,” or residential zoning. The site abuts and is adjacent to SF-5 and TF-3 zoned single-family residences, thus the requested Conditional Use. There is a small neighborhood tavern/drinking establishment (bar) located within approximately 750 feet of the site, thus a similar use is already in the neighborhood. A key difference between the existing bar and the proposed nightclub is the size of the proposed nightclub. The proposed 11,597-square foot vacant facility dwarfs the existing bar and as such may increase the chance for it to become a nuisance to the neighborhood, as it could attract a large number of people. The applicant’s proposed restrictions as outlined in their ‘Activities’ exhibit helps reduce the nuisance factor. Enforcement of these restrictions may fall outside the hours and days of the City’s Code Enforcement division, which leaves the Police Department as the group that may get the call for enforcement. The Police Department does not operate under the same codes as Code Enforcement. Another concern is how to find a business that can successfully occupy this 11,597-square foot vacant facility (most recently a failed grocery store), which in turn could help maintain the area’s commercial property. The location of this LC zoned property along Central Avenue, a major arterial allows good visibility and access beyond the immediate neighborhood.

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

- A. The site shall be in conformance with the approved site plan.
- B. No outdoor entertainment, recreation, food or drink services are permitted on the site.
- C. The facility shall be limited to the uses as outlined on the proposed ‘Activities,’ with the exception that Fridays can have similar uses. The facility is not open to the public on a daily basis at times other than when an event is scheduled. Any future proposed uses not listed shall be reviewed by the Zoning Administrator and Planning Director and may be considered for approval by an Administrative Adjustment or an Amendment to the Conditional Use.
- D. The facility shall be open as outlined on the proposed ‘Activities’
- E. The applicants shall comply with all applicable development standards of the UZC, including but not limited to parking, screening, and landscaping.
- F. The applicant shall obtain, maintain, and comply with all applicable permits and licenses necessary for the operation of an Event Center in the City.
- G. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director,

declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- The zoning, uses and character of the neighborhood:** The proposed use shares property with a pharmacy. Properties abutting and adjacent to the north side of the site are developed as SF-5 zoned single family residences and a TF-3 zoned duplex. There is a paved alley located along the north side of the site, which intersect with Mt. Carmel. There are also SF-5 zoned single-family residences located west of the site, across Mt. Carmel Avenue. Properties located south, east and west of the site, with Central Avenue frontage, are zoned LC and are developed as retails, offices, restaurants, a liquor store, some vacant commercial spots, a convenience store, a donut shop and a drinking establishment – tavern.
- The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC which allows a wide variety of retail, office and residential uses. The site could be used as zoned and developed or redeveloped as currently zoned. A concern is how to find a business that can successfully occupy this 11,597-square foot vacant facility (most recently a failed grocery store), which in turn could help maintain the area’s commercial property.
- Extent to which removal of the restrictions will detrimentally affect nearby property:** The applicant’s proposed restrictions days and hours of operation, when alcohol and/or cereal malt beverages may be served/consumed and activities can reduce the chance of the facility becoming a nuisance to the neighborhood. Enforcement of these restrictions may fall outside the hours and days of the City’s Code Enforcement division, which leaves the Police Department as the group that may get the call for enforcement. The Police Department does not operate under the same codes as Code Enforcement. The proposed 11,597-square foot vacant facility dwarfs the area’s existing bar and as such may increase the chance for it to become a nuisance to the neighborhood, as it could attract a large number of people. The site needs to meet the code required parking, screening and landscaping standard to further minimize detrimental impact on nearby property.
- Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities. The UZC requires a Conditional Use for a nightclub when located within 300 feet of “Church or a Place of Worship,” public “Park,” “School,” or residential zoning. The site abuts and is adjacent to SF-5 and TF-3 zoned single-family residences, thus the requested Conditional Use.
- Impact of the proposed development on community facilities:** None identified.

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

**MILLER-STEVENS** stated she realized they had these different times and different things going on, but with the Conditional Use they could drink and dance any night of the week, correct?

**LONGNECKER** said we are going to rely on their activities and say that drinking for the guests and members will only be allowed on the two nights that they have shown on the application. The other nights there will be no alcohol involved.

**MILLER-STEVENS** asked if the Conditional Use would be held to those times they stated.

**LONGNECKER** said correct. Again you have the same thing happening here as with that other application where the activities will be occurring when Code Enforcement is no longer active and you have the police department as the first point, the most immediate point in regards to enforcement. However, you could call Code Enforcement if it looks like things are not going as they should with the Conditional Use. You have two agencies that operating under different codes, but there is some lap over with the nightclub.

**MILLER-STEVENS** asked if they understood that alcohol consumption and dancing would only occur or allowed on those times they have stated in the application.

**LONGNECKER** said that is what the applicants offered up and that is what the applicant also stated to staff and stated last night at the District Advisory Board.

**GEORGE SHERMAN** stated in Condition C that the facility will be limited to the uses and proposed activities with the exception that Fridays can have similar uses. Does that mean similar uses on Monday, Tuesday and Thursday or does that mean the uses on the weekend.

**LONGNECKER** stated he left that one open. He said if they are going to be serving alcohol beyond this, at the very least looking at, you know you could make an application for an adjustment and it might become an amendment. But if they are doing BINGO or the dancing then that could simply be an adjustment to the Condition Use.

**GEORGE SHERMAN** stated he just wanted to make sure that it was clear for someday in the future so we don't crack down on them.

**LONGNECKER** stated that you could ask the applicant if that Friday is simply going to remain an open at ease day or whether they are actively seeking anything on Friday. On the application, Friday was only going to be shutdown so the applicant could take care of whatever business they need to for the organization.

**ALDRICH** asked if the DAB recommended any restrictions or limitations as far as outdoor speakers or security.

**LONGNECKER** stated no and, B is the same recommendation we made to the DAB but they didn't put the outdoor speakers on this one. He stated he was not sure why and to his fault he didn't bring up that disparity.

**ALDRICH** stated he sees this as a mirror image of the case we just had. He stated it seems like a slippery slope is getting a little slick.

**FOSTER** asked if the issue of outdoor speakers come up on past cases. Just simply saying no outdoor entertainment requires a little bit more information including no outdoor speakers or has it worked in the past, no outdoor entertainment.

**LONGNECKER** stated we had the restaurant Dudleys up off of 21<sup>st</sup> and Ridge, and they had an outdoor patio. I think I put on that one no outdoor speakers, but what got me on point with that was that they actually had an area for outdoor activity. So I put no outdoor activity associated with the bar, no speakers, trying to anticipate something like that happening. In this case as well as the other case, there wasn't any area that was called out for outdoor activity and the applicants didn't offer that up as some kind of option. The DAB took it upon themselves on the speaker part up north and they didn't look at it in this one. **LONGNECKER** asked **DALE MILLER** for his thoughts.

**DALE MILLER** stated maybe the simplest thing would be to ask the applicant if they plan to have speakers outside and if they don't then you could be very specific and say no outdoor activities and no speakers and when the detail are specific that makes it easier for the enforcement part.

**FOSTER** asked on the list of activities, I do have a concern if for some reason the business model changes and you have to have dancing on a different night and you have to have a bar to make the thing work to meet the needs of the public. How do we relax this so that it gives the applicant some flexibility?

**LONGNECKER** stated that you can always apply for an adjustment or amendment to the Conditional Use. If you are looking at having Friday night open for serving alcohol, the applicant would be advised that they can make application for an adjustment but it might turn into an amendment. We have City Law here, they might weigh on that. Both of these have very specific times and dates, but this one does have different activities.

**FOSTER** said he just gets concerned about enforcement issues plus if it could be handled with an administrative adjustment, then they don't have to go through much again and I could see that as being okay.

**LONGNECKER** stated that the application runs with the land and the current applicant could cease to operate on the site and that could bring in another applicant that would look for more flexibility in regards to the activities on these days. But they could make an application for an adjustment or amendment to the Conditional Use.

**MILLER** stated that the only thing he would add is that we just have to deal with what they give us. It would be one thing if staff was recommending these limitations, but this is what the applicant asked for and we are just supporting them. Ultimately, one would be second guessing their business model if we try to fix something that maybe they don't see as a problem.

**MITCHELL** said the drawing they we have on the last page was prepared by an architectural firm so I assume it has some dimensional accuracy. It would appear that there is a driveway just north of the alley but I don't see that on your layout. Am I looking at the same thing?

**LONGNECKER** asked if the plan on the screen was what he was looking at.

**MITCHELL** said he was talking about the alley and the entrance to Mt. Carmel. (Looking at the picture on the screen) The left hand side of that is the alley, correct?

**LONGNECKER** said this is a 20-foot alley and this alley is being used for loading but I have not found any vacation of the alley that would make it restricted for loading, plus its being used by this north property owner here and there's no record of a minor street permit. This is an odd alley and a portion of this looks to be used for loading and I didn't measure it out. So I'm not quite sure what going on there. You have a rather odd 10 foot strip that runs parallel to the alley, so I'm thinking that this is the alley, the 10 foot strip and the owner of the property owns that and that's why the dumpster is there. Then there is a drive further over there, parallel with this alley.

**MITCHELL** said that was my question. You have the alley and a driveway as I recall are connected. Where is it that you are recommending the screening? Is it beginning with the grass right there?

**LONGNECKER** stated yes. The screening would begin right here (Looking at the picture on the screen) and then it would carry down to the next drive to the south.

**MITCHELL** said he doesn't see another drive to the south.

**LONGNECKER** said there is

**MITCHELL** said the drawing doesn't show another driveway onto Mt. Carmel until you get to Central.

**LONGNECKER** stated that there is a drive midway down Mt. Carmel (Pointing to the screen).

**MITCHELL** stated that is not directly across from the residential.

**LONGNECKER** stated no, the residential is farther to the north.

**MITCHELL** said his question then is what is the approximate length of the screening fence that the DAB recommended?

**LONGNECKER** said from those two drives and he didn't know the length and would have to get back to him with that.

**MITCHELL** said part of that second drive is beyond the residential zoning.

**LONGNECKER** stated it ends just above the commercial property to the west. It's a pretty short stretch.

**MITCHELL** stated that was his question. Thank you.

**DENNIS** stated that Bill kind of touched on it before; this conditional use is going to run with the property, it doesn't matter if this business model doesn't work and someone else takes over, the Conditional Use is still going to be there. The way that it's written, any future Conditional Uses not listed shall be reviewed by the Planning Director. I can see why the DAB was concerned at the time because this list of activities is pretty benign and in addition it lists at the bottom the membership is 60 to 95 years of age so I would say that is pretty benign also. It doesn't have to be because of the future

owner that can take over and that would be my concern, the way that this is written. If we go back to the previous case that we just approved we just about set a precedent in this instance and suddenly we have a different set of rules for the exact same situation and it doesn't make sense to put one set of restrictions on one and one set on someone else. This Conditional Use is going to run with the property. Thank you.

**TOM CHENDORTIN, APPLICANT 2206 W. MACARTHUR ROAD** stated he is the current lodge administrator for the Moose organization. I am prepared to answer your questions.

**DENNIS** stated that there is a screening requirement that possibly could have been added. Are you in agreement with the requirement?

**CHENDORTIN** answered as long as it's okay with the landlord.

**MITCHELL** stated as he understands it the screening will be placed on City property.

**CHENDORTIN** stated he is not aware where it's going to go, it could be on the owners property. All I know we are obligated to put up the four foot fence for blocking headlights. We had a similar fence which was state required at our old location where we abutted I-235. We had to erect a four-foot fence 420 feet long. So I understand where they are coming from regarding lights.

**MITCHELL** stated he would like to know from Mr. **LONGNECKER** about the location of that fence. Did you say it's on City property?

**LONGNECKER** said that the parking lot is paved up right to the property line. My thinking was rather than have the applicant jackhammer out a portion of the parking lot, I, with Public Works this morning, checked to see if they would be okay with a minor street permit for a four-foot high maximum fence just high enough to cut off the lights to the residents. They were okay with that. I checked with Gunzelman to make sure that was not going to be any kind of visibility issue with him. Right now we have a tentative okay to put that screening fence, which is going to be a short run again, no taller than four feet in street right-of-way with a minor street permit.

**MITCHELL** stated that it will require payment of an annual fee.

**LONGNECKER** answered true.

**ALDRICH** stated that the way he looks at it with that screening it will do absolutely no good at all because you have a driveway up there on the north that wouldn't be screened and that is where the lights are going to into the residents. You go further down and there's a business right across the street. So what purpose would it do to put any type of screening/

**LONGNECKER** answered the purpose is the cul-de-sac to the west where there is a cluster of homes and then it straightens out to Mt. Carmel. So what you are going to do is you're going to get most of the houses that are going to be impacted by the parking are along the cul-de-sac. What you are not going to be able to do is get any type of screening that is going to be taller than three feet to help the other properties by turning north up Mt. Carmel.

**ALDRICH** asks that there is a drive right there, right?

**LONGNECKER** stated true.

**ALDRICH** said unless I do totally not understand; if you are looking at putting a screen up south of that drive, south of that drive is a business.

**LONGNECKER** stated part of it is business. The drive we are talking about, we are looking at the one that is abutting the alley then there is another drive south of that and basically that drive lines up with the end of that business and the start of that cul-de-sac those residences. So you are going to be offering some protection. (Looking at the screen) This is the site that's not going to get much protection because if you turn north you are going to hit the residences going on out.

**ALDRICH** (Looking at the screen) just from that house south, is there another residence south of that existing house right there.

**LONGNECKER** said yeah there is a cluster of houses around the cul-de-sac.

**ALDRICH** said that there is quite a bit of distance as it appears on the picture from that drawing to the end of the cul-de-sac where the residences are.

**LONGNECKER** said you have about four houses that would be protected by this screening, maybe five.

**DON SHERMAN** asked if they were planning on doing any outside entertainment.

**CHENDORTIN** answered no they don't. Everything will be inside.

**DON SHERMAN** asked if they put a restriction of no outside entertainment, including speakers, you would be okay with that?

**CHENDORTIN** stated that would be fine and that they have no use for that.

**DON SHERMAN** asked what his thoughts were about security.

**CHENDORTIN** stated that his City liquor license requires that I have a door person and that I must have an emergency evacuation plan in place. Let me familiarize you with the Moose operations. When we have an activity, we have a door person or an officer. You must show your membership card to get in and all guests have to be signed in. As far as the drinking times during the week, the only time that bar is open is when we have activities, which is on Thursday night and Saturday night dances. As of right now there is no Friday night activity planned, but hopefully in the future we would like to have something of Friday night, but that's if the people want to have it.

**DON SHERMAN** asked on serving liquor, its Thursday and Saturday.

**CHENDORTIN** stated yes, right now that's it.

**DON SHERMAN** asked but if the needs of your membership says we want to have something on Wednesday and we want to serve liquor on Wednesday you could easily do that, correct.

**CHENDORTIN** said not easily. The Board of Directors must approve that to start with.

**DON SHERMAN** said you would not have to come before anybody except your own body to get that done, right?

**CHENDORTIN** answered correct. We couldn't serve alcohol on Wednesday because state law prohibits us because if we hold BINGO we can't serve liquor that night.

**DON SHERMAN** asked if you are not doing BINGO that night, you can serve liquor correct?

**CHENDORTIN** stated they could but they won't. We plan to hold BINGO Wednesdays and Sundays, that's part of our fundraising.

**DENNIS** said to speak to Mr. **SHERMAN**'s question, if you look at item C you will see that for future proposed uses not listed shall be reviewed by the Zoning Administrator and Planning Director. So if the applicant wants to have something on Wednesday, which right now it says no bar, he would have to come back here, he couldn't just add it.

**DON SHERMAN** asked the applicant if he realized that.

**CHENDORTIN** said yes; but you are forgetting my comment that we can't serve liquor when we are holding BINGO.

**STEVE STONE 715 N. MT CARMEL COURT** stated he has been there for over 16 years and hundreds of times we've been in to Barneys and we like the business and we like them very much and we are on a first name basis with many of their employees. I remember my parents going to the Moose club when I was growing up, so I have no animosity towards any of them. We want Barneys to do well, but some of the concerns we had when we got the notice; we went over to talk to the owner and kind of expressed some of our concerns. I guess the idea of rezoning, we weren't real happy when they put in the plumbing business there, they took out a house that was there to put that in. If you rezone this for nightclub and then eventually Barney's closes and sells or whatever, and the Moose moves on; it's zoned for a nightclub, then what does that open up for future prospects about what could go in there. For the most part I not overly concerned about the kind of activity that the Moose would have. However, another concern we have is that they have 202 members according to their handout. They are going to have nights of BINGO and things like this. It's like if they have excessive people come to this, does this parking become an issue where people will be overflowing into our court and that area for parking. That is something we are concerned about. Also, would this affect our property value by having a nightclub venue this close to our property? So that was one of the things we were concerned about. It says here that on Saturday nights they would have DJ and band and that sort of thing, we don't know at this point what that means noise wise because all the years we have lived there the two businesses that have been there have been closed on Sundays and closed in the evenings. So we haven't had to deal with that kind of traffic and noise or anything like that. So we have some concerns that there will be more of those kinds of things to consider in terms of our quality of living there. Now understand it is a fairly busy intersection at Zoo Boulevard and Central, we understand that, but we just wanted to come and voice some of our concerns about these things, if that kind of business goes in and what the future might hold, then what that opens up for the possibilities in the future. Those are the concerns that we had that I wanted to voice today.

**FOSTER** asked the speaker if the screening that's been discussed will be a benefit to you.

**STONE** answered the exit there, possibly some directly back towards where we live and so that would probably help some in terms of that. Of course then you would have cars going in and out, why that only affects it for so long.

**CHENDORTIN** rebutted that he appreciated Mr. **STONE's** concern and stated he would like to address the noise problem. What is not listed on your chart is the inside of this building, it's a brick building, and noise is going to be pretty well suppressed. In additions to that, our intentions are to put the dance floor and it will be a walled-in ballroom type dance floor. So for noise to get outside is going to be pretty difficult because of what kind of band I put in there. I would like to address the membership, 202 members of which 65 are life members, which means that they have been a Moose member for 50 years, and to get them to come to this lodge is awful difficult to start with. The active members that support this lodge are an average of 40 to 50 people, if I'm lucky. We have a woman's auxiliary attached to the lodge. They are members of the lodge, but they have no vote and they do the volunteer work in the lodge. That's about 135 ladies of which 10 are active supporters.

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

**ALDRICH** moved, **WARREN** seconded the motion, and it carried (10-1).  
**D. SHERMAN** nay.

**JOHNSON** left at 2:38.

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8. **Case No.: CON2012-34** – City Conditional Use for Day Care, General in SF-5 Single-family Residential ("SF-5") zoning on property described as:

Lot 11 and the South 10 feet of lot 13, Wabash Addition to Wichita, Sedgwick County, Kansas.

AND

Lots 2, 4, 6 and 8, J. Wilson's Addition to Wichita, Sedgwick County, Kansas.

AND

Lots 1 and 3 EXCEPT the West 5 feet and lots 5, 7, 9 and 11, Ohio Avenue, Moore's Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The New Hope Missionary Baptist Church is requesting Conditional Use approval for a "day care, general," for up to 60 children. The proposed day care is to be located in the existing church. The church's facilities are located on two platted properties, .89 total acres that are separated by East 9<sup>th</sup> Street North and located west of North Ohio Avenue (south of East 13<sup>th</sup> Street North, west of I-135). The northern property (.456 acre) contains the church building that is proposed to house the "day care, general." The northern property offers virtually no off-street parking. Paved off-street parking for the church is located on property (.437 acre) located south of East 9<sup>th</sup> Street that is developed with a 52-space parking lot. See the attached aerial photograph that was submitted as the applicant's site plan. Hours of operation for the day care are proposed to be Monday through Friday, 6:00 a.m. to 6:00 p.m.,

year-round, excluding major holidays. Children between the ages of two-weeks to twelve years would be accepted.

In general, most of the properties surrounding the application area are zoned SF-5; however, there are a few scattered lots located in all directions that are zoned TF-3, Two-family Residential (“TF-3”), B Multi-family Residential (“B”) or GC General Commercial (“GC”). The New Hope Missionary Baptist Church also owns land located east, across North Ohio Avenue, and west, across the alley. Surrounding lots are developed primarily with single-family residences but there are a few duplexes, and a garage. Some of the surrounding lots are vacant.

The Unified Zoning Code (“UZC”) defines a “day care, general” as a facility that provides care, protection and supervision for more than ten individuals at any one time, including those under the supervision or custody of the day care provider and those under the supervision or custody of employees, or a day care center for ten or fewer individuals at any one time that is not operated as a home occupation. A “day care, general” use is permitted in the SF-5 zoning district with Conditional Use approval, subject to Supplementary Use Regulation D.6.i: (1) Day Care Centers shall comply with all applicable state regulations; (2) (does not apply as this subsection deals with a day care center located in a residence and (3) Outdoor play shall be limited to the hours of 7:30 a.m. to 6:30 p.m. if located within 100 feet of a lot containing a dwelling unit. In this instance there is a single-family residence located just west of the alley.

The UZC requires one off-site parking space per teacher/employee, plus one per vehicle used in the center, plus one per ten children based on enrollment above twelve.

**CASE HISTORY:** The property is platted Lot 11 and the South 10 feet of Lot 13, Wabash Addition; Lots 2, 4, 6 and 8 J. Wilson’s Addition and Lots 1 and 3 except the West five feet and Lots 5, 7, 9 and 11, Moore’s Addition.

**ADJACENT ZONING AND LAND USE:**

NORTH: SF-5, TF-3 and B; single-family residences, duplex  
SOUTH: SF-5, GC; vacant and single-family residences  
EAST: SF-5, GC; garage, single-family residences  
WEST: SF-5, TF-3, GC; vacant, single-family residences

**PUBLIC SERVICES:** Both East 9<sup>th</sup> Street North and North Ohio Avenue are two-lane paved streets with sixty-feet of right-of-way. The northern segment of East 9<sup>th</sup> Street that abuts the church structure is posted for no overnight parking. The site is served by all usually provided public services.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for “urban residential” uses. The “urban residential” category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality, including special residential accommodations for the elderly (assisted living, congregate care and nursing homes), elementary and middle school facilities, churches, playgrounds and other similar residential serving uses. The McAdams Neighborhood Revitalization Plan Future Land Use Redevelopment Concept map depicts the site as appropriate for “religious assembly.”

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

1. The Conditional Use permits the establishment and operation of a “day care, general,” as defined in the Wichita-Sedgwick County Unified Zoning Code. The “day care, general” use shall be developed and operated in general conformance with approved site plan, and all applicable local and state regulations.
2. The maximum number of children allowed to be cared for by the day care is sixty. The hours of operation shall be Monday through Friday, 6:00 a.m. to 6:00 p.m., year-round, excluding major holidays.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Most of the properties surrounding the application area are zoned SF-5; however, there are some scattered lots with TF-3, B or GC zoning. Most of the lots are developed with single-family residences. There are a few two-family residential units and a garage, as well as some vacant lots located in the area surrounding the subject site.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned SF-5, which is the second most restrictive zoning district found in the City. Churches are permitted by right in the SF-5 district. The existing church could continue to be operated as currently zoned. However, it is not unusual for a church to seek approval for a day care center as a means to increase more frequent use of the church’s facilities and as an a method of community outreach.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Presumably approval of the day care center for up to 60 children would increase the number of Monday-Friday vehicle trips to the site.
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 would add to the child care opportunities available to northeastern Wichita. Denial would presumably represent an economic loss to the church.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for “urban residential” uses. The “urban residential” category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality, including special residential accommodations for the elderly (assisted living, congregate care and nursing homes), elementary and middle school facilities, churches, playgrounds and other similar residential serving uses. The McAdams Neighborhood Revitalization Plan Future Land Use Redevelopment Concept map depicts the site as appropriate for “religious assembly.”

6. **Impact of the proposed development on community facilities:** Existing community facilities are adequate to meet any additional demands created by the proposed day care center.

DALE MILLER, Planning Staff presented the Staff Report.

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

JOHNSON moved, D. SHERMAN seconded the motion, and it carried (12-0).

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9. **Case No.: CON2012-36** – City Conditional Use to permit a Nightclub within 300 feet of residential zoning, in LC Limited Commercial ("LC") zoning on property described as:

Lots 1, 2 and the West 2.47 feet of the South 65 feet of the North 137.5 feet of lot 8, Cain & Smith's Replat to the City of Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant seeks a Conditional Use to permit a Nightclub in the City on property zoned LC Limited Commercial ("LC"), generally located south of East Kellogg and east of Pinecrest (5205 E. Kellogg). The proposed site is a 3,300 square foot space within a larger commercial strip building. The site has been used for some time as a restaurant with a DE-R liquor license, requiring 50% or more of gross sales in food. The applicant now wishes to obtain an Entertainment Establishment license to allow karaoke. Under the Unified Zoning Code (UZC) the combination of an Entertainment License and serving alcohol is defined as a Nightclub. Nightclub in the City is a permitted land use in the LC zoning district. However, the application area is within 300 feet of residential zoning; the UZC requires that Nightclubs, Taverns and Drinking Establishments located within 300 feet of residential zoning, a church, school or park be subject to Conditional Use review to determine if the particular site is suitable for the operation of a Nightclub, Tavern or Drinking Establishment. The building space has a 138-person occupancy. The applicant's site plan (see attached) indicates 70 available parking spaces. The number of parking spaces meets the UZC parking requirement of 1 space per two patrons for a Nightclub.

North of the site is the Kellogg expressway, further north is the GO General Office ("GO") zoned VA Hospital. South of the site is an LC zoned hotel under the same ownership as the application area. Further south, down Pinecrest, are MF-29 Multi-family Residential ("MF-29") zoned single-family residences. The nearest residence on Pinecrest is approximately 190 feet from the application area, triggering this Conditional Use request. East of the site is an LC zoned retail building and restaurant. West of the site is an LC zoned office building.

**CASE HISTORY:** The property was platted as Lots 1 and 2 of the Cain and Smith's Replat in 1942.

**ADJACENT ZONING AND LAND USE:**

NORTH:	GO	Kellogg expressway, VA Hospital
SOUTH:	LC, MF-29	Hotel, single-family residences
EAST:	LC	Commercial strip center, restaurant
WEST:	LC	Office building

**PUBLIC SERVICES:** The site has direct access points onto the Kellogg Drive service road and onto

Pinecrest. All normal public services are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide, as amended in May 2005, of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this site as “Regional Commercial.” The existing zoning and requested Conditional Use are in conformance with this designation. The property is not part of a CUP, and does not have any special site development regulations for use restrictions, buffering or screening.

**RECOMMENDATION:** Historically this site has been a restaurant with a DE-R liquor license, permitting alcohol sales provided that food sales exceed 50% of gross sales. This building and business do not appear to have any negative impacts on the neighborhood to the south. The site appears to meet the UZC parking requirements; the property owner will be required to demonstrate to OCI that all businesses with access to this parking lot meet code parking requirements. All property owners within 200 feet of the site have been notified of this request; no neighboring property owners have contacted staff. Staff feels that code requirements and the recommended conditions will mitigate impacts on the surrounding neighborhood. Based upon information available prior to the public hearings, planning staff recommends that the Conditional Use request be **APPROVED, subject to the following conditions:**

1. The Conditional Use for a Nightclub in the City shall be limited to a 138-person occupancy.
2. The Conditional Use shall be limited to the building space identified on the approved site plan, and shall use only the parking identified on the approved site plan.
3. The site shall be developed in general conformance with the approved site plan and in compliance with all city ordinances, including but not limited to: zoning, sign, building, fire and health codes and licensing requirements. Failure to conform to any city code and/or failure to maintain proper licensing will be a violation of the Conditional Use.
4. The parking lot shall be kept free of all trash and debris. No loitering, congregating or excessive noise shall be permitted in the parking lot. No outside loudspeakers or entertainment, including outside dancing, shall be permitted.
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** North of the site is the Kellogg expressway, further north is the GO General Office (“GO”) zoned VA Hospital. South of the site is an LC zoned hotel under the same ownership as the application area. Further south, down Pinecrest, are MF-29 Multi-family Residential (“MF-29”) zoned single-family residences. The nearest residence on Pinecrest is approximately 190 feet from the application area, triggering this Conditional Use request. East of the site is an LC zoned retail building and restaurant. West of the site is an LC zoned office building.
2. **The suitability of the subject property for the uses to which it has been restricted:** The building could be used for a wide variety of LC uses allowed by the current zoning without a Conditional Use.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** A

nightclub could bring more late night activity to this location. However, this site has been used for a DE-R restaurant without apparent impact on the neighborhood to the south. The proposed conditions should keep parking limited to the applicant's site, and should mitigate noise and trash issues associated with the facility.

4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide, as amended in May 2005, of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this site as "Regional Commercial." The existing zoning and requested Conditional Use are in conformance with this designation. The property is not part of a CUP, and does not have any special site development regulations for use restrictions, buffering, or screening.
5. **Impact of the proposed development on community facilities:** The facility should have no significant impact on streets and utility services. The proposed use will increase the need for oversight from the police and OCI to ensure compliance with licensing requirements and other conditions of approval.

JESS MCNEELY, Planning Staff presented the Staff Report.

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

JOHNSON moved, D. SHERMAN seconded the motion, and it carried (12-0).

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10. **Case No.: CON2012-37** – City Conditional Use for an Accessory Apartment in TF-3 Two-family Residential ("TF-3") zoning on property described as:

Lots 18, 20, 22 and 24, on Poplar Street in Oliver's Subdivision of Block 5 Chautauqua Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is seeking Conditional Use approval for an "accessory apartment" on property zoned TF-3 Two-family Residential ("TF-3") located 360 feet north of East Douglas Avenue, on the east side of North Poplar Street. The applicant owns two platted parcels, one containing 7,698.58 square feet and addressed as 129 North Poplar, and one containing 5,247.36 square feet, addressed as 135 North Poplar. Each parcel has a single-family residence, reported to have been built in 1920 and 1925, respectively. 129 North Poplar also has an approximate 1,050 square-foot accessory structure at the rear of the 130-foot deep parcel. The applicant proposes to raze the accessory structure located at 129 North Poplar, and replace it with a 46-foot by 28-foot (1,288 square feet) accessory apartment.

Properties located north of the application area are zoned TF-3 and are developed with single-family residences. Land to the east is also zoned TF-3, and is developed with single-family residences. There are some properties located further to the southeast, fronting East Douglas Avenue, that are zoned LC Limited Commercial ("LC") and developed with government offices. Properties located south of the site are also zoned TF-3 and LC, and are developed with single-family residences and general office buildings. To the west of the subject site is 220 feet of street right-of-way that includes an alley, Grove Street and Grove Drive. West of the Grove Drive are lots that are zoned B Multi-family Residential ("B").

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

The UZC defines a duplex as the use of a lot for two principal dwelling units within a single building. If the applicant were to attach the proposed second dwelling unit to the existing single-family structure, a Conditional Use application for an accessory apartment would not be required.

The TF-3 zoning district property development standards call for a minimum rear setback of 20 feet for principal structures; however, accessory use rear building setback (Sec. III-D.7.e(1)) shall be at least ten feet from the centerline of any platted or dedicated alley, and if no alley exists, then five feet from the rear lot line. Accessory structures may not utilize more than one-half of any required rear yard. In this circumstance there is an alley located immediately west of the subject site.

Accessory structure interior side yard setbacks are the same as that required for the principal use, which is six feet except that one required side yard for a single-family dwelling unit or duplex may be reduced to as little as zero feet if setback lines are established that ensure a minimum of twelve feet between structures on contiguous lots; however, accessory structures are not required to set back more than three feet from an interior side lot line when all parts of the accessory structure are located more than one-half the depth of the lot behind the front property line. In this instance the proposed accessory apartment is located in the rear half of the property. No accessory structure may be located on any platted or recorded easement, or over any known utility.

The property is located within the “environs” of the Stopher Apartments, 2505 East Douglas, that are designated as a State and National Historic Landmark. The State of Kansas Environs statute requires review of projects located within 500 feet of a state or nationally designated landmark. The applicant will need to contact the City of Wichita’s Preservation Planner to obtain the “environs” review.

**CASE HISTORY:** The date of construction for the house located on the subject tract is reported as 1920. Most all of the houses in the larger neighborhood were also built in the early 1920s. At that time the City of Wichita zoning code did not have a single-family residential zoning district. The most restrictive zoning district at that time was the A Residential district that permitted both single-family and two-family residences by right. The Oliver’s Subdivision of Block 5 Chautauqua Addition was recorded in 1886.

**ADJACENT ZONING AND LAND USE:**

NORTH: TF-3; single-family residences  
SOUTH: TF-3 and LC; single-family residences  
EAST: TF-3 and LC; single-family residences and government offices

WEST: Grove Street right-of-way and B

**PUBLIC SERVICES:** The property is serviced by all publicly supplied municipal services. Poplar Street has sixty feet of right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for “urban residential.” The “urban residential” category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units.

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

1. The Conditional Use permits one single-family accessory apartment on that part of Lot 20 beginning 65 feet west of the southeast corner northwesterly to a point on the north line 35 feet east of the northwest corner, thence west 35 feet to the northwest corner south to the southwest corner east 65 feet to the beginning and Lots 22-24, Popular St. Oliver’s Subdivision, Block 5, Chautauqua Addition (129 North Popular). The site shall be developed and maintained in general conformance with the approved site plan, and in conformance with all applicable regulations, including but not limited to: local zoning, including Article III, Section III-D.6 .a.(1)-(4); building, fire and utility regulations or codes. The revised site plan shall include a description of the materials to be used on the exterior façade of the accessory apartment.
2. A revised site plan shall be submitted prior to final approval of the resolution authorizing the accessory apartment that depicts the perimeter of the subject site, dimensions, existing structures, parking and driveway areas, utility easements, street names, north arrow, etc.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Properties located north of the application area are zoned TF-3 and are developed with single-family residences. Land to the east is also zoned TF-3, and is developed with single-family residences. There are some properties located further to the southeast, fronting East Douglas Avenue, that are zoned LC Limited Commercial (“LC”) and developed with government offices. Properties located south of the site are also zoned TF-3 and LC, and are developed with single-family residences and general office buildings. To the west of the subject site is 220 feet of street right-of-way that includes an alley, Grove Street and Grove Drive. West of the Grove Drive are lots that are zoned B Multi-family Residential (“B”).
2. **The suitability of the subject property for the uses to which it has been restricted:** The property is zoned TF-3 which permits two dwelling units in one structure. Potentially, the applicant’s objective of building a second structure on the property could be met as currently zoned.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:**  
Approval of the request should not detrimentally impact nearby properties. A second dwelling unit could be installed without Conditional Use approval but would require the dwelling unit to be attached to the existing single-family structure. The conditions of approval should minimize any anticipated detrimental impacts.
  
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for “urban residential.” The “urban residential” category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units.
  
5. **Impact of the proposed development on community facilities:** If this request is approved, the site is served by municipal services that are able to accommodate projected demand created by this request.

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

**FOSTER** stated in the staff report, it refers to Popular Street, but I believe its Poplar.

**MILLER** stated that will be changed, thank you.

**CHRIS SAMPSON, APPLICANT** stated they requested this Conditional Use permit for the property. If you can see the square in the picture, those two properties that the applicant that I represent owns both properties, and then they have a long driveway that goes all the way back to Grove. If you can see to the back towards Grove, there is a very small garage that they feel is dilapidated. They want to do away with it. Due to the fact that this family owns both properties and that they were going to tear it down they wanted see if they could build themselves an accessory apartment, a mother-in-law property that would house a family member. It's an Asian family and they pride themselves on being very close knit family members. They reside in both homes and wanted to build the accessory apartment very similar in size, it would not be much larger than what is there already. This driveway is 60-70 feet long and if the apartment came any further it would come just a few feet larger than what is already there. It wouldn't go any wider; it wouldn't go any further back. As far as aesthetics goes there are different types of residential housing in that area. We took multiple pictures of different types of siding and architectural designs allowed over there. It varies and we brought pictures if that helps, if somebody wants to look at the different pictures of homes in that area. To my understanding it sits on a line that can go either way as far as how it's being coded. So there's different, it can lean either way for us or against us but we went ahead and went around to several residents within 200 feet and got them, or explained to them what we are trying to do. The only complaint at first or issue was that it might be turned into rental property and they didn't want any more renters in that area. When I informed them it would be a family member that would reside there, and I only had that issue with one person, everyone else was completely okay with it because we are tearing something down that was old and building something up that was new. Other than that, we are just trying to take just about the same size of structure, make it newer and give it its own utilities and its own street address just so that whatever family member that resides there can be independent but still be looked after by the family members.

**ALDRICH** asked the applicant that he was saying you want to have a separate utility hookup.

**FARNEY** said Mr. **MILLER** is going to address that.

**MILLER** said that's the first he had heard that. If they want to pursue that, then this will have to go on to City Council for final approval to waive that requirement that they all be on the same service.

**ALDRICH** stated that looking at the report, that was two different things right there.

**FOSTER** asked as an accessory, is it allowed to have a separate address.

**MILLER** stated that there is no problem with a separate address. The code just says it needs to have outside materials that are similar in color and material of the principal structure, that it has to have the same sewer and water connection and that it could never be sold off separately from the principal structure.

**ALDRICH** said he had a follow up question that based on the current information that just came out on this, would staff still recommend approval.

**MILLER** said yes as long as we get a provision that it won't be sold. I'm not sure how much trouble they will have in getting another meter and go through all that. That will be a whole separate activity.

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

**FOSTER** asked if they should make note in reference to separate sewer and water, or just rely on the council.

**MILLER** said you don't need to speak to that unless the Commission has a specific concern, because the code allows them to go to the Council to ask for that waiver. If the Planning Commission felt like that was something that you wanted to speak to specifically, then you would want to include it in the motion.

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

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**FOSTER** stated that this has happened before when members of the audience were still here and we learned that the case had already been heard or on consent and I think we should ask the audience that's here.

**FARNEY** said we can do that as a curiosity. **FARNEY** asked the audience if anyone was here to speak on an item and did not fully understand this is your last chance, just stand up. I see nobody.

**NON-PUBLIC HEARING ITEMS**

Other Matters/Adjournment

The Metropolitan Area Planning Commission adjourned at 2:40 p.m.

State of Kansas )

Sedgwick County )<sup>SS</sup>

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

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

(SEAL)

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