

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

September 6, 2012

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 6, 2012, at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Shawn Farney; Chair, David Dennis; Vice Chair, Bob Aldrich, David Foster, Bill Johnson, Don Klausmeyer, John W. McKay Jr., Debra Miller-Stevens, M.S. Mitchell, Morrie Sheets, George Sherman and Chuck Warren. Ron Marnell and Don Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Robert Parnacott, Assistant County Counselor and Jeff Vanzandt, Assistant City Attorney.

1. Approval of the August 2, 2012 Planning Commission meeting minutes.

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

MCKAY moved, **ALDRICH** seconded the motion, and it carried (8-0-4).
JOHNSON, SHEETS, G. SHERMAN and **WARREN** abstained

- 1-1. Election of Chairman

MOTION: To nominate **DAVID DENNIS** as Chairman

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

Election of Vice Chairman

MOTION: To nominate **GEORGE SHERMAN** as Vice Chairman

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

MCKAY stated that he would like to thank **SHAWN FARNEY** for the job he did this year and I think he did an excellent job as Chairman.

DENNIS said on behalf of the City and the County and especially the MAPC, I want to thank **SHAWN FARNEY** myself for the work that he did as our Chairman for the past year.

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2.1 **SUB2012-00019: One-Step Final Plat – QUIKTRIP 12th ADDITION:** generally located on the southeast corner of Kellogg Drive and Broadway.

NOTE: This is a replat of the Orme and Phillips Addition which includes the vacation of the north 17 feet of Orme. The alley was previously vacated (VAC2007-00005).

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve both lots being platted.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the applicant's drainage plan.
- D. Traffic Engineering has approved the access controls which includes one opening along each of the perimeter streets in accordance with the site plan.
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- F. The spelling of "rights-of-way" needs corrected in surveyor's certificate.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- 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).

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

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

3. PUBLIC HEARING – VACATION ITEMS

3-1. VAC2012-29: City request to vacate a portion of a platted front building setback.

APPLICANT/AGENT: Norma J. Davis, c/o Eric J. Larson (owner) Spangenberg Philips Tice Architecture, c/o Randy Phillips)

LEGAL DESCRIPTION: The south 7 feet 4 inches of the platted 35-foot front yard setback that runs parallel to the north lot line of Lot 1, Davis-Moore 5th Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located east of Edgemoor Drive, south of Kellogg Street/US 54 and west of Fabrique Drive (5927 E. Kellogg, WCC #III)

REASON FOR REQUEST: Existing building encroachment and proposed additional encroachment

CURRENT ZONING: Subject property and all abutting west, east and southern properties are zoned LC Limited Commercial ("LC"). The subject property is part of the overlay CUP DP-183. Adjacent northern (across Kellogg/US 54) properties are zoned Single-Family Residential ("SF-5").

The applicants propose to vacate the south 7 feet 4 inches of the platted 35-foot front yard setback, on the described lot. There has been a long standing building encroachment into this setback as shown on 1997 aerial photos and the CUP DP-183 drawing. The UZC's minimum front yard setback for the SF-5 zoning district is 25 feet. If the setback was not platted the applicants could request an Administrative Adjustment that would reduce the SF-5 zoning district's minimum 25-foot front yard setback by 20%, resulting in a 20-foot front yard setback. Reduction beyond the 20-foot front yard setback would require a variance, which is a separate public hearing process. The minimum front setback for a CUP is 35 feet.

An adjustment to the CUP can reduce the CUP's setback, which would reflect (if approved) the vacated setback. There are no platted easements within the platted setback; utilities are located in the abutting street ROW. There are no utilities are within the described portion of the platted setback. The Davis-Moore 5th Addition was recorded with the Register of Deeds September 20, 1988.

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

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

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time August 16, 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 front setback and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate the south 7 feet 4 inches of the platted 35-foot front yard setback that runs parallel to the north lot line of Lot 1, Davis-Moore 5th Addition, Wichita, Sedgwick County, Kansas, where the encroachment is and will be. Provide Planning Staff with a legal description of the approved vacated portion of the platted front setback on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action
- (2) File an Administrative Adjustment to CUP DP-183 to reduce the setback as approved by this vacation case. This must be provided to Planning prior to the case going to Council for final action
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (4) All improvements shall be according to City Standards and at the applicant's expense.
- (5) 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) Vacate the south 7 feet 4 inches of the platted 35-foot front yard setback that runs parallel to the north lot line of Lot 1, Davis-Moore 5th Addition, Wichita, Sedgwick County, Kansas, where the encroachment is and will be. Provide Planning Staff with a legal description of the approved vacated portion of the platted front setback on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action
- (2) File an Administrative Adjustment to CUP DP-183 to reduce the setback as approved by this vacation case. This must be provided to Planning prior to the case going to Council for final action
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (4) All improvements shall be according to City Standards and at the applicant's expense.
- (5) 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, **MCKAY** seconded the motion, and it carried (12-0).

3-2. VAC2012-30: City request to vacate a portion of platted access control

APPLICANT/AGENT: Goodwill Industries of Kansas, Inc., c/o Emily Compton (applicant/owner) Baughman Co., P.A., c/o Phil Meyer Schaefer, Johnson, Cox and Frey, c/o Joe Johnson (agents)

LEGAL DESCRIPTION: Generally described as allowing one 40-foot wide drive in the north 40 feet of Lot 3, Block 4, Mediterranean Plaza Addition

LOCATION: Generally located on the west side of Webb Road and south of 34th

Street North (WCC #II)

REASON FOR REQUEST: Improve circulation into & out and within the site

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

The applicant is requesting consideration to vacate the described portion of the platted access control on Lot 3, Block 4, Mediterranean Plaza Addition to allow one additional 40-foot wide drive in the north 40 feet of the site onto Webb Road. The applicant proposes the additional drive to improve access onto and off the site and to improve vehicular circulation within the site. Lot 3 has 309.64 feet of Webb Road frontage. The plat permits one drive onto Webb and that drive is currently located in the south 45 feet of the site. The proposed drive will be located approximately 240 feet from the site’s existing drive. The proposed drive will be located approximately 100 feet from a drive on the northern abutting property; VAC2012-00027. Webb Road is a four-lane arterial, without turn lanes or raised median at this location. Jabara Airport is located directly east of the site, across Webb Road. There is platted complete access control onto Jabara Airport from Webb Road, between 35th Street North and Jabara Road, which is the portion of Jabara Airport that is located directly east of the site; Colonel James Jabara Airport Addition, recorded August 23, 1983. Subdivision standards requires a 200-foot offset for drives not lined up on the opposite sides of an arterial and not having conflicting left turns; there are no permitted drives opposite the site, thus no conflicting left turns. Subdivision standards require a 200-foot spacing for right-in – right-out drives, however the Subdivision Regulations (“SD”) allow consideration of modifications to those standards; SD 10-104. In the past the SD and MAPC have considered modifications to these standards.

There is public water and Westar equipment located within the Webb Road right-of-way. The Mediterranean Plaza Addition was recorded March 16, 1988.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time August 16, 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 access control and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Per the approval of the Traffic Engineer, vacate the platted access control along the site's Webb Road frontage to allow one additional opening to Lot 3, Block 4, Mediterranean Plaza Addition. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense. If necessary provide all plans and any guarantees needed by Public Works to ensure any relocation or reconstruction of utilities will be completed. Either the guarantee(s) and/or approved plans must be provided to Public Works prior to the case going to Council for final action. Regarding Westar Energy equipment, the applicant can contact Becky Thompson, the Construction Services representative for this area at 316-261-6320.
- (3) All improvements shall be according to City Standards and at the applicant's expense, including; the construction of a new drive from the site onto Webb Road. Provide Public Works with a guarantee (approved project/plans) to ensure that these and any other associated improvements will be made. If the drives are not being immediately constructed, provide a drive approach certificate, which will be recorded with the Register of Deeds. Either the guarantee(s) and/or the drive approach certificate must be provided to Public Works (guarantee) or Planning (drive approach certificate) prior to the case going to Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Per the approval of the Traffic Engineer, vacate the platted access control along the site's Webb Road frontage to allow one additional opening to Lot 3, Block 4, Mediterranean Plaza Addition. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense. If necessary provide all plans and any guarantees needed by Public Works to ensure any relocation or reconstruction of utilities will be completed. Either the guarantee(s) and/or approved plans must be provided to Public Works prior to the case going to Council for final action. Regarding Westar Energy equipment, the applicant can contact Becky Thompson, the Construction Services representative for this area at 316-261-6320.

- (3) All improvements shall be according to City Standards and at the applicant's expense, including; the construction of a new drive from the site onto Webb Road. Provide Public Works with a guarantee (approved project/plans) to ensure that these and any other associated improvements will be made. If the drives are not being immediately constructed, provide a drive approach certificate, which will be recorded with the Register of Deeds. Either the guarantee(s) and/or the drive approach certificate must be provided to Public Works (guarantee) or Planning (drive approach certificate) prior to the case going to Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

PUBLIC HEARINGS

4. **Case No.: ZON2012-00022** – Mike Brand (Owner/Applicant) and Baughman Company, P.A., c/o Phil Meyer (Agent) request a City zone change from GO General Office, MF-29 Multi-family and LC Limited Commercial to TF-3 Two-family Residential for duplex development on property described as:

Lot 1 Westney Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting TF-3 Two-Family Residential (“TF-3”) zoning on the undeveloped 10.5-acre MF-29 Multi-Family Residential (“MF-29”), GO General Office (“GO”) and LC Limited Commercial (“LC”) zoned site. The site’s legal description is Lots 1, 2 and 4 of the Westney Addition. The undeveloped Lot 3 of the Westney Addition is the corner lot (northwest corner of 55th Street south and Seneca Street) of this subdivision will retain its current LC zoning. The applicant proposes a duplex development, although the MF-29, GO, and LC zoning districts permit duplexes by right. A lending institution may require the zoning to match the development.

The undeveloped site occupies most of the northwest corner of 55th Street South and Seneca Street. The dominate feature of this area is the large SF-5 Single-Family Residential (“SF-5”) zoned public park land with its sand pits, open spaces and playing fields. The SF-5 zoned Southland Public Park with its sand pit used for fishing abuts the west side of the site. A small SF-5 zoned manufactured home subdivision is located on the west side of the park and the USD 261 public school development, anchored by the City of Haysville’s Campus High School, finishes out development west of the site. A multiple tract SF-5 zoned single-family residence abuts the north side of the site, with adjacent SF-5 park land and urban scale single-family residences located further north. Urban scale SF-5 zoned single-family residential development makes up most of the development located east, across Seneca, of the

site. However, directly east of the site on the northeast corner of 55th and Seneca there is a small group of LC zoned apartments and MF-29 and TF-3 zoned duplexes, clustered around a LC zoned convenience store. Development located south of the site, across 55th, includes undeveloped LC zoned property, large and small tract LC and SF-5 zoned single-family residences, a LC zoned church, a GC General Commercial (“GC”) zoned contractor’s yard, a LC zoned bar (looks vacant) and SF-5 and SF-20 Single-Family Residential (“SF-20”) zoned agricultural land.

CASE HISTORY: The site is platted as Lots 1, 2 and 4 of the Westney Addition, recorded December 8, 1988. A portion of the site was rezoned “light commercial” in the 1958 County rezoning. Z-2645 rezoned the rest of the Westney Addition to commercial zoning. The site appears to have been undeveloped since its rezoning.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residence, public park land, single-family residences
SOUTH:	LC, SF-5, SF-20, GC	Undeveloped land, single-family residences, contractor’s yard, bar, agricultural land
EAST:	SF-5, Haysville	Public park land, single-family residences, public schools
WEST:	LC, MF-29, TF-3, SF-5	Convenience store, apartments, duplexes, single-family residences

PUBLIC SERVICES: Seneca Street is a four-lane arterial at this location. 55th Street South is a two-lane minor arterial with a center turn lane at this location. All public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The ‘2013 Land Use Guide of the Comprehensive Plan’ (Plan) identifies the LC zoned portion of the site “local commercial” and the GO and MF-29 portion as “urban residential.” The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The Plan identifies LC and GO zoning as being generally compatible with the local commercial category. The LC and GO zoning district allows residential uses, including duplexes, by right. The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in large urban municipality. The Plan identifies MF-29 zoning as being generally compatible with the urban residential category. The MF-29 zoning district allows residential uses, including duplexes, by right. The site’s requested TF-3 zoning is compatible with the Plan’s urban residential category.

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

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood:** The dominate feature of this area is the large SF-5 Single-Family Residential (“SF-5”) zoned public park land with its sand pits, open spaces and playing fields. The SF-5 zoned Southland Public Park with its sand pit used for fishing abuts the west side of the site. A small SF-5 zoned manufactured home subdivision is located on the west side of the park and the USD 261 public school development, anchored by the City of Haysville’s Campus High School, finishes out development west of the site. A multiple tract SF-5 zoned single-family residence abuts the north side of the site, with adjacent SF-5 park land and urban scale single-family residences located further north. Urban scale SF-5

zoned single-family residential development makes up most of the development located east, across Seneca, of the site. However, directly east of the site on the northeast corner of 55th and Seneca there is a small group of LC zoned apartments and MF-29 and TF-3 zoned duplexes, clustered around a LC zoned convenience store. Development located south of the site, across 55th, includes undeveloped LC zoned property, large and small tract LC and SF-5 zoned single-family residences, a LC zoned church, a GC General Commercial (“GC”) zoned contractor’s yard, a LC zoned bar (looks vacant) and SF-5 and SF-20 Single-Family Residential (“SF-20”) zoned agricultural land.

- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned LC, GO and MF-29. The LC zoning permits retail, the GO zoning permits office, the MF-29 zoning permits apartments and all of these zoning districts permits duplexes. The site appears to have been undeveloped since its rezoning.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Impact will be minimal, as the site’s current LC, GO and MF-29 zoning permits duplex development, which the applicant proposes with the requested TF-3 zoning. The requested TF-3 zoning is actually more restrictive than the site’s current multiple zoning.
- (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 place a more restrictive zoning on the site, limiting development by right to single-family residential, duplex, and some (but not limited to) institutional uses such as a parks, schools and churches.
- (5) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The ‘2013 Land Use Guide of the Comprehensive Plan’ (Plan) identifies the LC zoned portion of the site “local commercial” and the GO and MF-29 portion as “urban residential.” The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The Plan identifies LC and GO zoning as being generally compatible with the local commercial category. The LC and GO zoning district allows residential uses, including duplexes, by right. The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in large urban municipality. The Plan identifies MF-29 zoning as being generally compatible with the urban residential category. The MF-29 zoning district allows residential uses, including duplexes, by right. The site’s requested TF-3 zoning is compatible with the Plan’s urban residential category.
- (6) **Impact of the proposed development on community facilities:** All services are in place, and any increased demand on community facilities can be handled by current infrastructure.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

5. **Case No.: DER2012-00006** – Amendment to the Wichita-Sedgwick County Zoning Code, as amended, dealing with: Section III-D.1, Principal Use Regulations Schedule; Section III-D.6.b,

Supplementary Use Regulations and Section IV-E, Home Occupations, including codification and other minor amendments.

BACKGROUND: Earlier in the year Metropolitan Area Planning Department (“MAPD”) staff was requested by the Sedgwick County Board of County Commissioners to review *Wichita-Sedgwick County Unified Zoning Code* (“UZC”) regulations dealing with rural home occupations. A four-person citizen’s committee composed of Charlie Peaster, John Daley, Max Weddle and Joe Johnson were appointed to assist with the review. MAPD and County Law staff met with the citizen’s committee on approximately six occasions. Based upon comments made by the committee, a number of amendments to the UZC, primarily dealing with rural home occupations found in Article IV, Section IV.E, were drafted.

On August 2, 2012, the Metropolitan Area Planning Commission (“MAPC”) established September 6, 2012, as the date for a public hearing to consider amendments to the July 9, 2009 Edition of the Wichita-Sedgwick County Unified Zoning Code (“UZC”), as amended, dealing with: Section III-D.1, Principal Use Regulations Schedule; Section III-D.6.b, agricultural Supplementary Use Regulations; Section IV-E, Home Occupations and Section V-I.2, Types of adjustments allowed, including codification and other amendments as identified below. The MAPC instructed that the proposed amendments be sent to the Advanced Plans Committee for review and comment. On August 16, 2012, and August 30, 2012, the Advanced Plans Committee met with staff and the citizen’s committee. The proposed amendments presented below were approved by unanimous vote by the Advanced Plans Committee and with the Citizen’s Committee’s unanimous concurrence.

The only proposed clarification to non-rural home occupations is found in Section IV.E.3.g, which makes it evident that inventory produced by employees of a home occupation can be legally sold. The current language can be interpreted to mean that a home occupation can have employees that produce inventory but inventory made by employees cannot be sold on the premises. The proposed amendment removes the possibility of that interpretation.

Some of the recommended modifications to Article IV, Section IV-E are:

- A) Sec. IV-E is a clarification that there are two types of home occupations – home occupations that are allowed in any residential district regardless of city or county location and rural home occupations that are only allowed in the county. Rural home occupations are those uses that would not be appropriate on urban scale lots, such as “animal care, general and limited” or “contractor storage” or a “machine shop” but are generally considered to be appropriate on larger rural tracts, subject to certain development standards.
- B) Sec. IV-E.3.f allow rural home occupations located in the SF-20 Single-family Residential (“SF-20”) and RR Rural Residential (“RR”) districts to have the equivalent of four full time employees by right instead of only two employees.
- C) Sec. IV-E.3.g is a clarification that products made at the home occupation site by employees of the home occupation may be displayed or sold on the premises.
- D) Sec. IV-E.5.j adds “tattooing and body piercing facilities (County)” to the list of permitted home occupations.
- E) Sec. IV-E.7.a reduces the minimum lot size requirement for a rural home occupation from 20 acres to two acres.
- F) Sec. IV.E.7.b reduces from 600 feet to 40 feet the required separation distance between a rural home occupation and a residence located off-site that does not operate a rural home occupation.
- G) Sec. IV-E.7.d states outside storage shall not be located within any required building setback or within 20 feet of a property line, whichever is greater instead of 200 feet. Screening of outside storage

is required on properties of less than five acres in size or within 50 feet, instead of 600 feet, of a property line or public right-of-way. A provision has been added, Sec. IV-I.2, to allow administrative zoning adjustments to the screening requirements.

H) Sec. IV.E.7.e states that rural home occupations are permitted to have on-site the equivalent of four full time employees by right, instead of being limited to two employees. Rural home occupation employees that do not report to the site of the rural home occupation do not count towards the total of four full time employees.

I) Sec. IV.E.7.h states that rural home occupations that cannot meet one or more of the rural home occupation development standards but have two acres may apply for a Conditional Use for a waiver of the standards.

J) Sec. IV-8.l clarifies that the parking of one commercial vehicle that exceeds 26,000 pounds, owned by the occupant is a permitted rural home occupation

K) Sec. IV.E.7.q-t adds the following used to those uses permitted as a rural home occupation: lawn care service, truck garden, firewood sales, tattooing and body piercing facilities and uses determined by the Zoning Administrator to be similar in character to other listed rural home occupations are permitted.

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

CONFORMANCE TO PLANS/POLICIES: The *Wichita-Sedgwick County Comprehensive Plan Preparing for Change* contains the goal to encourage orderly growth in order to meet future demand while considering cost to tax payers, developers, the environment and the community as a whole (Land Use-General Goal I).

FINDINGS: In recent years home occupations have become an increasingly significant segment of the City's and County's land use mix. It is important to provide opportunities for a wide variety of home occupations in a manner that protects the essential characteristics of low and rural density residential zoning districts from potential nuisances caused by home occupations. It is also important to recognize the different character of homes located in the county on a variety of larger lot sizes and the increased kinds of rural home occupation activities that may be appropriate on larger tracts. Some of the proposed amendments clarify existing home occupation and rural home occupation standards. In other cases, new uses are added, and existing development standards are modified. With respect to rural home occupations, the proposed changes recognize that most of the county is zoned RR Rural Residential ("RR") which has a minimum lot size of two acres; has a minimum lot width of 200 feet and has building setbacks of 20 to 25 feet. The minimum RR development standards allow for a wider variety of activities and a greater number of employees as a rural home occupation use than would be appropriate on urban scale lots. The kinds of uses allowed or proposed to be allowed as a rural home occupation are generally no more intense than traditional farm activities. The proposed setback and screening requirements are designed to protect nearby residences from excessive traffic or other undesirable impacts while recognizing that many residences are often surrounded by large tracts of farm ground or other natural buffers. The proposed amendments promote the comprehensive plan's goal of providing orderly growth and should not detrimentally impact existing community facilities.

RECOMMENDATION: Approve the proposed amendments to the Wichita-Sedgwick County Unified Zoning Code.

DALE MILLER, Planning Staff presented the Staff Report.

ALDRICH asked if this would have any effect on seasonal operations, for example, a haunted house operation or would the separation between a business and residence for example like a rescue center, would that type have any adverse effect on those types of businesses.

MILLER said that specifically a haunted house is categorized as outdoor or indoor recreation and requires a Conditional Use, it's not allowed as a home occupation, so that particular use wouldn't be covered. Then like a rescue operation, are you talking about someone who rescues dogs or horses or something, well technically, if its horses and you are boarding horses that are not yours, then that makes you a stable and you would need a Conditional Use. Now if you owned the horses, just by virtue of the fact that somebody couldn't take care of them and they gave them to you, then you wouldn't need the Conditional Use because they would be considered your own property. The dogs would be the same way only that would be a kennel. The only difference is, with kennels there's a definition on the maximum number of dogs that you could have before you are considered to be a kennel, I believe.

ALDRICH asked if it would be the same thing if it was birds or....

MILLER answered presumably, I hadn't thought about birds.

ALDRICH stated he was referring to the facility that we heard here a while back that had some issues since they had different types of birds, eagles and things of that nature, so I was just wondering how that would affect, because there was a neighbor, if I recall, that had some issues with it, so I'm just wondering if that would have any bearing.

MILLER answered that he didn't believe we did anything here that would change anything on that particular application.

FOSTER stated that he wished he had more time to study this, but I have a few questions for you. On Section III-D.6.b referencing agriculture there and just to confirm the RR and the SF-20 zone would be allowed to have the agricultural uses as defined. Is that correct?

MILLER stated correct.

FOSTER stated that if you look at the definition here on page 8 it refers to agricultural or forestry products or for the purpose of raising livestock. Then it goes further and defines sales that can occur, sales of nursery stock, firewood, Christmas trees, etc. Would those sales include livestock?

MILLER asked if he was saying if a farmer or rancher can sell livestock off of their site. Is that what you are asking?

FOSTER stated that according to this, on a 20,000 square foot lot in the SF-20 you could do agriculture.

MILLER stated that if you are doing agriculture...

FOSTER and that would include sales.

MILLER stated that is exempt from these regulations. These would not apply.

FOSTER stated that you could sell livestock on a 20,000 or less than a half acre lot. That's what I want to understand.

MILLER stated that if you are ruled to be an agricultural use. Bob, do you agree with that?

BOB PARNACOTT, ASSISTANT COUNTY ATTORNEY stated that yes, if it is understood to be a traditional agricultural use, then that is allowed and is exempt from the zoning requirements. Now there may be other requirements, I'm speaking for the unincorporated area primarily, what you are talking about under agricultural sales and service is not really what you would consider to be traditional agricultural uses, so we zone that. Again, the sale of farm tools, equipment, feed, grain and tact, those kinds of things. I don't know if that helps, does it.

FOSTER stated he still thinks there's a little opening there for something to occur.

PARNACOTT stated that again, the problem is the agricultural exemption is imposed by statute and we don't have any control over that through the zoning code.

MILLER stated that he thinks the distinction would be raised if we went through an interpretation is if the person on the 20,000 square foot lot had raised the animals on the acreage then that would be agricultural, but if they are bringing them in from off site, that they didn't raise, then that's a different category.

FOSTER asked that as long as it's raised onsite, they can sell it?

MILLER answered yes.

FOSTER said if you go to page two, Item F, sorry Item G, no inventory except articles produced onsite by members of the immediate family residing on the premises or employees of the home occupation shall be displayed or sold on the premises. Are there any guidelines or controls related to display of these items that would be for sale?

MILLER stated that it depends on what they are selling. If it was something that involved a structure, they would have to observe the building setbacks, but if you are just talking about candles or some other activity they would have to follow the standard rules that we would have regarding structures.

FOSTER said that the only requirement that I found was related to outdoor equipment and storage which required it to be behind the principle use structure. Is that what is going to be the only control on this, or does that even apply?

MILLER answered that storage and display are usually defined as two different things and so if it is truly storage that wouldn't fall under that rule.

FOSTER said that in other words there aren't controls for the display of products that are to be sold.

MILLER said that he didn't believe so and don't believe there had been under the current statutes.

PARNACOTT said that if he could interject, if you look in the zoning code on page 198, there is a

requirement that the home occupation be conducted entirely within the principal dwelling unit or in permitted accessory structures and that only applies to home occupations. We have some exceptions on things that can occur outside, but when we are talking about display of inventory, I think you are primarily looking at people who have a candle display in side their home; they are making candles at home and are having people come in the home to buy from that site. So I don't know if that is much in display of inventory on the outside, it's more an indoor type of thing.

FOSTER said he could give you an instance, for example a company that sharpens mower blades and eventually got into mower repair and eventually have twenty plus mowers displayed at any one time attempting to be sold. That's why I'm asking these kinds of questions about display.

MILLER said that maybe an oversight that the commission may want us to take a look at.

FOSTER had another question on page four, this 7b, rural home occupation must be located at least forty feet from residences located offsite from zoning lot or property containing the rural home occupation less the offsite residence operates a rural home occupation. The question here is does this deny someone who does not have a home occupation who is adjacent to one, could they come back and do that?

MILLER stated no, the way the original wording was you could have a rural home occupation as long you were located 600 feet from an offsite dwelling that did not operate a rural home occupation but if they were operating a rural home occupation then the second one didn't have to observe the 600 feet separation. So because of the change in the minimum lot size we had to change that distance down to the one you see there. So no, this does not preclude someone from coming in next door to a rural home occupation and putting in a rural home occupation.

FOSTER stated that it says adjacent, if the, if someone wanted to do that and the other one had a rural occupation, they couldn't.

MILLER stated what it is saying is that the rural home occupation has to be located forty feet from a residence that does not have rural home occupation.

FOSTER asked a follow up question, how do you get from 600 to forty?

MILLER answered that the minimum lot width in RR is 200 feet, and so if you actually had a series of lots that met the minimum lot size that would preclude the 600 feet and would prevent anyone within the 600 feet from basically running a rural home occupation if they were all lined up with residences . So what we tried to do was get a number that made sense with the minimum lot size of two acres instead of twenty acres. If you think about it, a ten acre tract, although I don't know how many out there would be perfectly square, would be 660 x 660.

PARNACOTT added that's the side setback isn't it, the twenty feet.

MILLER stated yes.

PARNACOTT stated that's how we came up with it, the existing side setback.

MILLER said that we were trying to get numbers that made sense with the two acre minimum lot size as opposed to the twenty acres.

FOSTER asked going down further, Item D, the last sentence there that's underlined, screening requirements for rural home occupations may be reduced or waived by administrative adjustment as described in Section V-1.2, are there some situations where administratively the neighbors may not hear or be notified of a rural home occupation?

MILLER answered that we don't send out individual notices with administrative adjustments. They are required to put up the red and white sign that's supposed to be visible from their property. Its supposed to be up for ten days. So theoretically, if someone was interested they would see the sign, and if they wanted to call for the details, it would be available to them. This was put in as a result of the Advance Plans Committee's first meeting. The original proposal that came out of the committee was to eliminate the screening requirement completely. The committee thought that for smaller tracts that probably didn't make sense. So they asked us to come back with a revision that would trigger screening in certain circumstances. So that's why we came up with, if you are less than five acres, you could go through this process. If you have some natural screening in place, where it makes sense where you wouldn't have to put new screening in then you can do the administrative adjustment and not have to build separate screening; but then on the larger tracts, you would be able to go by the standard rules.

FOSTER stated, going on down, on Item F, only the standards of Section IV-E3a and IV-E3c, it eliminates a couple of them, shall apply to rural home occupation. If you go to that section, page 189, that eliminate all but two of the standards there. Now let me ask you, the home occupation shall not occupy more than 50% of the gross floor area contained within the dwelling unit. Does that apply anymore?

MILLER stated that the best way for me to answer that is, currently rural home occupations already have those exemptions. This is essentially a repeat; the only thing that has changed is we eliminated IV-E3g and IV-E3h. Everything else is the same as it is today.

FOSTER asked what percent of the rural dwelling could be home occupation then.

MILLER stated that he didn't have the code in front of me, is that under III-A or III-C?

FOSTER stated III-B.

MILLER stated then for rural home occupations that wouldn't apply if that was III-B, because the only ones that apply are A and C.

FOSTER asked if 75 or 100% of a rural dwelling be home occupation.

MILLER said it sounds like it.

FOSTER stated that it also says that there is no outdoor storage of equipment, including but not limited to construction equipment, so forth, so that's taken out as well, right?

MILLER stated right, other than the standard screening requirement. Now getting back to the other one, we may need to confer here, but I don't know if we intended to allow a rural home occupation to occupy 100% of the floor area. That may be something that we didn't catch when we went through it, but we can certainly discuss that.

FOSTER stated that there is a couple more in here that are struck and one, the home occupation shall be conducted entirely in the principal dwelling unit or in a permitted accessory structure. I'm curious how the accessory structure comes into play here.

MILLER said that the main distinction is, in just a home occupation, it cannot be in an accessory structure, it's supposed to be in the principal structure. So the rural occupation allows the accessory structure to come into play.

FOSTER asked if that was up to 10,000 square feet or how much was that?

MILLER answered that it gets back to that limitation there. Keep in mind here we are dealing with two different sets of home occupations: there's the general home occupation that allowed both in the City and the County, and then there are only those uses defined as rural home occupation that are allowed in the County on tracts of two acres or more that are zoned RR or SF-20.

FOSTER asked on page five, Item 8e, notwithstanding the definition of vehicle repair, limited, and such use may be conducted outside as a rural home occupation. Notwithstanding means in spite of that particular situation and if you go back to the definition of vehicle repair, limited, does that mean if someone outside on a 20,000 square foot lot or a two acre property could do electronic tune ups, brake repair, air conditioning repair, transmission and engine repair, generator and starter repair, tire repair, front end alignment, battery recharging, lubrication, sales, repair and installation of parts and accessory and so forth. This goes on further to define general vehicle repair as well. Is that correct?

MILLER answered if its vehicle limited, this clause allows vehicle repair limited to be done entirely outside. If it is vehicle repair general, the main distinction being body work, then that has to be done inside.

FOSTER asked if there are any provisions related to how long those vehicles can be there in their repair state.

MILLER answered not in the home occupation section. I don't know if there are other codes that apply on inoperable vehicles and how long they can be there.

FOSTER stated that it could be endless.

MILLER stated that as far as the home occupation section I think that's true, but presumably if someone turned in a complaint about a vehicle that was setting there for a long time, which ever was the appropriate code enforcement department would look at it and at some point determine whether that vehicle has become wrecking and salvage as opposed to repair. Bob may want to comment.

PARNACOTT stated that he didn't have anything to add. It was a fair statement.

FOSTER asked if you go down to Item L here, it says that parking or storage of one commercial vehicle that exceeds 26,000 pounds of gross vehicle weight rating when owned by the occupant, nothing in this section prohibits commercial vehicles less than 26,000 pounds less than gross vehicle weight. Does that indicate that someone can maintain a tandem truck, a semi whatever on a 100 foot wide lot, the semi might be sixty plus foot long or something like that, is that what it's telling.

MILLER stated what its saying is if the vehicle is under 26,000 pounds then its making it clear that its allowed to be there by right rather than....there was a concern that someone would interpret that if you had those kinds of vehicles and they were associated with a home occupation, then they would count against the number of home occupation vehicles that you could have on site. This was meant to be a clarification that vehicles less than 26,000 pounds are allowed.

FOSTER stated unlimited.

MILLER said as they would be in a residence.

FOSTER asked about the one that exceeds 26,000 pounds.

MILLER stated that would require a Conditional Use.

FOSTER stated that he has some further observations late but I'll mention those at another time.

GEORGE SHERMAN stated that back when he was in grade school, we used to play a game called "what doesn't belong" and I'm kind of curious how tattooing and body piercing facilities fits in the rural home occupation list that we have as opposed to a hole other list of potential uses.

MILLER stated that was a specific use that was suggested that would be appropriate as a rural home occupation.

GEORGE SHERMAN said that the way this is written you could have a husband and wife and four outside employees in a tattoo parlor shop, forty feet from somebody's house?

MILLER said under the proposed regulations you could now have as a rural home occupation....you could have up to four outside employees. It was limited to two, then you could get a Conditional Use

and then get four, then you could do a Variance and get more. This makes it where you could have four by right.

GEORGE SHERMAN asked if staff was generally satisfied with the way this is written and the changes we made.

MILLER stated that we think so, I think we had a lot of discussion back and forth on the pros and cons of various things. I think these reflect effective compromises on both sides in terms of trying to make activities easier to do yet still be sensitive to the fact you have residential areas. It is complicated by the fact you have ag. uses going on, which, in and of themselves, generate more adverse issues than what the home occupation might.

GEORGE SHERMAN said that it seems that if you are dealing with really large lots, that makes a lot of sense, but a two acre lot is almost a City lot in the big developments.

MILLER said that you may want to hear from the folks on the committee and they can provide their own comments on this if you want.

CHARLIE PEASTER, 9453 NORTH 153RD STREET WEST said he was appointed to this committee by the County Commission to work on trying to make some changes that we thought would deal with home occupations. Besides the four of us that were on the committee, there was Bob Parnacott, Dale Miller and Mr. Schlegel. We brought this to the Advance Plans committee, and the first time we were there with them they made some suggestions and some corrections and we came back with them. I thought they pretty much agreed with what we had done in regards to this. There is no way you can create a book and a set of regulations that's going to fit every situation every time because no matter what you try to do there's going to be an incident that comes up that's going to change it. Out where I live, there are three over-the-road truck drivers. Yes, they park their rigs on their property. You're talking about trucks that exceed 88,000 pounds or in excess of 88,000 pounds. The trailer can be as long as 52 feet and it still meets the state requirements of fewer than 100 feet without a permit. They come in, park during the night and are there for one or two days and then they are gone again. Now they chose to live in the County and they have their vehicles parked on their property in the County. If you have a vehicle that's inoperable, the state allows you up to nine provided they're screened at road level. If you stand at the street looking at my property, and I have inoperable vehicles, you are not supposed to be able to see them because I have a fence there. These were all changes that were made in the book prior to this; the reason mainly for this change came up with a deal with home occupations. We tried to do the best we could with what we had and that's where we are at. Thank you for your time.

GEORGE SHERMAN said not being on Advance Plans or being at any of the meetings I wouldn't mind hearing from somebody on Advance Plans about their thinking and how they feel about this and some of the questions that were brought up.

ALDRICH stated didn't Advance Plans unanimously vote in support.

DENNIS stated that he would answer Mr. **SHERMAN's** question. The Advance Plans committee met actually twice on this. Normally we only meet one time on a subject like this. We had a number of questions after the first meeting. The first meeting wasn't short. It went a couple hours actually, which is fairly long for an Advance Plans meeting. Following that, Mr. **PARNACOTT** and Mr. **MILLER** went back and made a number of changes, working with the group that you heard from here today that

put this together. We had a second meeting a week ago to go through it again. Just as Mr. **PEASTER** said, I don't know if we will ever get it perfectly right now, but I think we met what the goals were. There was an awful lot of discussion; the Advance Plans committee did move to bring it to the full MAPC.

FOSTER stated he had further comment. Just wanted to make some observations relative to the findings in the staff report. The first sentence here says in recent years, home occupations have become an increasingly significant segment of the City's and County's land use mix. I contacted the appraiser's office to get a sense of what increasingly significant means. Well their response was no, there has not been an increasingly significant amount of rural or home occupations in general in the past few years. The second statement here, it says, it is important to provide opportunities for a wide variety of home occupations in a manner that protects the essential characteristics of low and rural density residential districts from potential nuisances caused by home occupations. Every item being proposed here is greater, depending on your viewpoint. It goes from 600 to 40 feet; it goes from 20 acres to 2 acres, and you are increasing the intensity of development. That does not protect the low or rural density zoning districts from potential nuisances. There are some other comments here; I will pick another one here that I don't think is true. The proposed amendments promote the Comprehensive Plan's goal of providing orderly growth and should not detrimentally impact existing community facilities. Over about thirty years, I've conducted 50, more than 50, land use fields surveys for small communities and for counties. And you, after a while you see a lot and what goes on relative to zoning and land use development. What happens when a community wants to annex that two acre or that 20,000 square foot parcel, and say it has that vehicle repair? It's going to come in with the zoning it has from the County. That to me is not orderly growth relative to the Comprehensive Plan. Having said that, I will close with one observation. The intent of home occupation is to promote the small guy to be able to make it. There are a lot of businesses that have done that. When you add four employees, you are changing the game and I happened to look at one environmental law report and the comment was in effect what this situation does, it's a de-facto commercial zoning area in rural areas was the impact that this particular report mentioned. That's exactly what I am seeing here. I don't see it helping the County visually; I don't see it helping the County in the long term. I think you might get the thought that I am not going to support this.

ORIGINAL MOTION: To approve subject to staff recommendation.

JOHNSON moved, **MITCHELL** seconded the motion.

FOSTER said he wanted to propose a substitute motion because the changes are so far reaching that this needs to be looked at in more detail. We have not heard any numbers related to other communities that have done this for a comparable analysis on it. I think there needs to be further study and I would propose that this be deferred.

SUBSTITUTE MOTION: To defer

FOSTER moved, motion fail due to lack of second.

GEORGE SHERMAN stated that what Bill Johnson said here a minute ago, it makes sense to me although I agree with some of the things Mr. **FOSTER** said. I recognize the fact we do have a committee that's composed of half the members. They have looked at this twice, and I assumed raised the questions that have been raised here. My feeling is I'm willing to go along with what that committee

came up with.

WARREN stated I might ask Mr. **FOSTER** that since this is going forward on a vote, do you have some comments on the changes to display. We talked about lawnmowers. Do you want to make any changes to the proposal that might affect displaying of merchandise outside, since it looks like it's going forward.

FOSTER stated that he thinks that would be wise and I would appreciate staffs help in being able to come up with the criteria for that.

JOHN SCHLEGEL, PLANNING DIRECTOR stated he didn't bring this up before when Mr. **FOSTER** brought this up, but under the general standards, don't we have a provision that prohibits the outdoor storage of equipment including but not limited to construction equipment, materials or vehicles used by the home occupation, unless allowed as a rural home occupation in the RR district. It's Item D on page one, under General Standards. Does that cover what Mr. **FOSTER's** concern is?

MILLER stated that I guess what I would add is that we did not intentionally change the rules regarding display from what they had been prior.

PARNACOTT stated he didn't have anything to add to that, but what you are seeing in this handout for streamlining purposes is just the sections that we were changing. Obviously there are other sections that we didn't touch. For example, going back to your example of the lawnmower repair place, that is actually covered as a home occupation and is a recognized home occupation. If you look at page 202 in the current zoning code there an allowed home occupation for the production, fabrication and assembly of small implements used in the home office, shop, garage, lawn, garden and farm. So that's an existing provision that allows that type of activity as a rural home occupation. And again, we haven't really made changes, I believe that's correct, to the display requirements. I think the only real change in that sense, as far as sale of inventory, is to make it clear. I think that previously it appeared that only the inventory that was made by the residence could be sold on their premises, not necessarily those that were manufactured by non-resident employees. So we were just trying to clear that up; really that's not much of a change, I don't believe. Which doesn't necessarily mean that if you want to make a recommendation that we should either not allow outside display of that type of inventory, or if we should make it clear that they are subject to some type of screening, certainly that is a possibility a policy call?

FOSTER said that the question is that we don't know what that might be. We are so inventive that who knows what someone might come up with to put out front for sale. I'm going to switch gears on the question, is there an annual permit, fee that's required for the rural home occupations?

PARNACOTT stated no.

FOSTER stated that he sees that as a commonality in other regulations that I looked at, because they do require an annual registration certificate and an annual fee, and they also have an annual inspection of the particular rural home occupation, but that's not in this, correct?

PARNACOTT stated that we never had, that I'm aware of, a fee for home occupation, be it annual or even a one time. There are certain rural home occupations that are allowed by right and some of them you have to go through a Conditional Use process, in which case there is obviously a fee associated with

that. But every after a Conditional Use is issued for a rural home occupation type of activity , that's not something we routinely go out and inspect and we don't go out unless we have a complaint. So that again is something that we currently do, and again I'm speaking specifically about the zoning code, and not about any , perhaps there is, I don't believe we have one in the County, but maybe the City has occupational codes that require perhaps annual business permits of some sort. I don't believe we have those in the County, so there may be things outside the zoning code , but as far as the zoning code is concerned, the short answer is no.

FOSTER said that he wished he had an immediate answer on the display issue, but I would need a little bit more time to review this and to come up with some information on that. So at this time I wouldn't have any specifics on that.

ORIGINAL MOTION: To approve subject to staff recommendation.

JOHNSON moved, **MITCHELL** seconded the motion, approved by a vote of (11-1)
FOSTER, nay.

NON-PUBLIC HEARING ITEMS

Other Matters/Adjournment

JOHN SCHLEGEL stated that he did have an item he would like to bring up. I want to make you aware of a proposal that will come to City Council and I think the County Commission next week regarding the proposed merger of the two Boards of Zoning Appeals into this body, the Metropolitan Area Planning Commission. There were two proposals that were floated by staff that led to the proposal that will be heard by the City Council and the County Commission. The first one came out of the Planning Department as a result of the budget reductions that we are facing for 2013. We were asked to look for ways to reduce cost for the department. One of the ideas we floated as part of the County's budget review process was to merge the two BZA's into the MAPC. There are cost savings that can accrue as a result of that. There are a number of administrative costs that we can accrue over time if we would do that. The other driver was the consolidation of the City's OCI Department with the County's Code Enforcement Department, the thought there was that with the merger of the trade boards that will occur as a part of that larger consolidation, then why not then consolidate the two BZA's. So as we went through discussion about those two different ideas, what has emerged is the idea that the MAPC would also sit, then, as the BZA. Because of the limitation in the State Statues, Board's of Zoning Appeal can only have a maximum of seven members. Then what would happen is the, in the case of a City BZA item, then the appointees of the City Council would sit in as the City's BZA and the same for County cases, the County appointees would hear that case. If this goes through, the way that we would do this is just when we have applications for Variances or Zoning Code Interpretations, that they would be put on the end of the MAPC agenda and then those members that would need to remain for that item would stay after the MAPC meeting, we would adjourn the Planning Commission meeting and reconvene for the members that needed to be there for the BZA items as the BZA. So I wanted to make you aware of that and it goes on CITY Council agenda for next week, is that still the schedule?

VANDZANT stated it will be one week later than that.

SCHLEGEL stated okay, one week later. Bob do you know when it will be at the County Commission?

PARNACOTT stated that this is being handled by Bill Raymond and not me, so I don't have that answer, but we are doing it in tandem and would imagine the same week.

SCHLEGEL asked for any questions or comments?

ALDRICH said he has a dumb question, what happens in the event that is should happen that maybe there's not a majority, whether it's the City or the County Commissioners to hear a case, could there be an overflow or does it have to be separate?

SCHLEGEL said it would be, in the case, let's say we did not have at least four County appointees here for a County case, and then we would not have a quorum. We could not hear that BZA item that day.

GEORGE SHERMAN asked that currently the chairman is a City appointee and I'm a County appointee, so I don't know, would you elect separate chairmen for the BZA groups, how would that work.

SCHLEGEL stated those seven City appointees would constitute the City Board of Zoning Appeals for the City and the seven from the County would be the County BZA. They would then elect their own chairs.

GEORGE SHERMAN said okay, and then they could be separate from the MAPC chairs.

SCHLEGEL stated that he didn't know if he explained that very well, but the BZA's would still remain separate, we wouldn't have separate appointees to the BZA. It is just that the boards would overlap rather than having separated appointees from the MAPC.

GEORGE SHERMAN said right now for example, the City Council member has appointed someone to the MAPC and someone to the BZA, would he decide which one remains or would it just be the MAPC that remains.

SCHLEGEL stated that it would be the MAPC. The current appointees to the BZA's would no longer be the respective BZA members.

MILLER STEVENS stated that she needed a little education, for BZA cases, what is the nature of those cases. Are they going to appeal to us decisions that we have made on the MAPC. That's almost a conflict of interest there. I don't know if I'm going to change my mind because you brought it back asking can you change your mind.

PARNACOTT answered saying that the Board of Zoning Appeals has two types of jurisdiction, they hear two kinds of cases. They have original jurisdiction which is for variances, and obviously that is not something that you guys don't have any involvement with. So if someone needs a variance, or relaxation of the zoning code, you go to the BZA and get a variance. The other type of jurisdiction the BZA has is appellate jurisdiction, because they hear appeals of the zoning administrator or other types of appeals made by other administrative officials. Again that is not something that you guys are involved in. So no you would not be hearing anything that you've already heard and decided.

SCHLEGEL stated that we would probably have to go through some training of the type that Bob described, so that you know the distinct roles that Planning Commissions have that are different from what the Boards of Zoning Appeals have. As we conduct those meetings, we would simply remind you that the role is different.

GEORGE SHERMAN asked how often the BZA meets.

SCHLEGEL answered that the County BZA doesn't get a lot of cases and only meets a couple times a year, two or three, the City, maybe six to seven times a year.

GEORGE SHERMAN asked if it could be arranged so that there wasn't a City or County BZA hearing scheduled for the same day.

SCHLEGEL said that could happen, what we would do is schedule the easier case first and then the one that might take a little longer, second.

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

State of Kansas)
Sedgwick County) ^{SS}

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

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

(SEAL)

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