

**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**September 20, 2012**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 20, 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: David Dennis, Chair, George Sherman, Vice Chair, Bob Aldrich, Shawn Farney, David Foster, Bill Johnson, Don Klausmeyer, Ron Marnell, John W. McKay Jr., Debra Miller-Stevens, M.S. Mitchell, Morrie Sheets, Don Sherman and Chuck Warren. 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 prior MAPC meeting minutes.

- *No Minutes*

2) **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- **NO ITEMS**
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3) **PUBLIC HEARING – VACATION ITEMS**

- **NO ITEMS**
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**PUBLIC HEARINGS**

4) **Case No.: CON2012-00030** – Richard J Gronniger (owner), Kansas Paving, c/o Larry Hacker (applicant) and Baughman Co., c/o Russ Ewy (agent) request an amendment to condition #5 of CON2009-00036 on property described as:

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

**BACKGROUND:** The applicant is requesting an amendment to Conditional Use CON2009-00036's condition #5: "Sand extraction shall cease June 18, 2012. All equipment and materials associated with

the operation shall be removed from the premises by September 18, 2012. Site restoration (grading, seeding, etc.) could continue after September 18, 2012.”

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

The subject property and the surrounding area is zoned RR Rural Residential (“RR”), which permits consideration of a Conditional Use for sand and gravel extraction. The area is outside the 2030 urban growth area for Wichita and the small cities. The area is primarily agricultural in use with scattered large tract/lot single-family residences, including 15-18 houses along 73<sup>rd</sup> Street North. Non-residential development includes a landscaping contractor’s yard (County variance BZA2010-00023) located northeast of the site and two church campgrounds are located west of the site. These non-residential developments have 73<sup>rd</sup> Street North frontage/access. The contractor’s yard has the potential to generate up to 20 vehicle trips per day. Access onto the site is off of 73<sup>rd</sup>, a non-section line sand and gravel road maintained by Park Township with contractual assistance from the applicant. The merging of the Arkansas River and a section of canal of the Wichita – Valley Center Floodway forms the triangle shaped south boundary of the area. The site is located within this triangle of merging river and man-made drainage canal. Other past and current non-residential development/permits in the area includes at least two other spent sandpits (CU-277 & CU-268) and one approved sandpit (CON2006-00013, not in operation) located within approximately ½-mile of the site. All of these sand pits had or will be directing their sand trucks to Ridge Road.

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

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

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

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

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

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

**ADJACENT ZONING AND LAND USE:**

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

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

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

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

1. The extraction operation on the site shall proceed in accordance with the approved site and redevelopment plans (including any modifications to limitations on the scope of excavations required by other regulating agencies), and be subject to the supplementary use regulations found in the Unified Zoning Code at Article III, Section III-D.6.gg, unless specifically modified by conditions contained in this conditional use.
2. If limitations on the scope of excavation are required after final approval, the applicant shall provide a revised site plan depicting those restrictions. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan. The applicant shall provide a date when the 18-acre expansion of the original site will begin to be used as part of the sand and gravel extraction operation.
3. Fencing shall be what was approved in CON2003-32.
4. Signage shall be as allowed by the Sedgwick County Sign Code.
5. **Sand extraction shall cease August 2, 2014. All equipment and materials associated with the operation shall be removed from the premises by October 2, 2014. Site restoration (grading, seeding, etc.) could continue after October 2, 2014.**
6. The applicant will apply a dust control agent (Magnesium Chloride or Calcium Chloride) at rates and frequencies that will provide dust control on the plant drive and on 73<sup>rd</sup> Street North, from the entrance to the site to Ridge Road. The initial application rate and application schedule will be based on a written recommendation made by an experienced supplier for an annual maintenance cycle. A letter from the supplier stating the recommended annual schedule will be provided to MAPD, County Public Works and Code Enforcement prior to April 1, 2008. The applicant shall notify County Code Enforcement in writing within 10 days after each application of dust control agent. The notification shall state the dust control agent used, application rate, total amount applied and date of application. The application schedule and rates may be adjusted by the applicant based on actual road and weather conditions with written approval from County Code Enforcement and County Public Works.
7. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel and Public Works, prior to the commencement of any sand and gravel extraction operation, providing an area for temporary detention storage of drainage on the site.
8. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the surrounding area is primarily agricultural with scattered large tract single-family residential all zoned RR. The proposed two year extension of all operations (including removal of equipment as listed in the amended condition #5) of the sand and gravel extraction site will not alter the zoning, uses and character of the area. There are at least 3 other spent or approved gravel and sand extraction operations located from the Arkansas River to 77<sup>th</sup> Street North, west of Ridge Road. Other non-residential development includes a landscaping contractor's yard (County variance BZA2010-00023) located northeast of the site and two church campgrounds are located west of the site. These non-residential developments have 73<sup>rd</sup> Street North frontage/access. The contractor's yard has the potential to generate up to 20 vehicle trips per day.

2. **The suitability of the subject property for the uses to which it has been restricted:** The RR zoning designation of the subject property permits sand and gravel extraction upon approval of a Conditional Use. The current operational time of the subject site's sand pit as permitted with CON2009-36 is over. Because of the slowdown in the economy the extraction of sand and gravel from the site has been less than what was anticipated. The applicant has also filed an Administrative Adjustment, to extend the time for the sand pit to operate, prior to final action on today's case, CON2012-00030.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed two-year extension means a longer period of heavy truck traffic to and from the site. The applicant is still required to operate within the conditions of CON2009-36, including providing dust control on the plant drive and on 73<sup>rd</sup> Street North, from the entrance to the site to Ridge Road.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Land Use Guide of the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development. The "Rural" classification is intended to accommodate agricultural and rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County, and predominately large lot residential sites or subdivisions with provisions for individual, or community water and sewer services. The Wichita/Sedgwick County Comprehensive Plan indicates that industrial uses in rural areas should be limited to those that are agriculturally oriented, dependent upon a natural resource, or part of an appropriate expansion of an existing industrial use. A sand and gravel extraction operation is considered "mining and quarrying," which is an industrial use. The Wichita/Sedgwick County Comprehensive Plan indicates that industrial type uses such as sand and gravel extraction are appropriate in rural areas where the natural resource is located. The proposed two-year extension of the operation of the sand and gravel extraction operation is a result of the current slow economy. The proposed extension of the operation of the sand and gravel extraction operation does not change the character of the subject site and as such is not out of conformance to the adopted or recognized Comprehensive Plans or policies.
5. **Impact of the proposed development on community facilities:** The proposed two-year extension of the operation of the sand and gravel extraction operation will extend heavy truck traffic on 73<sup>rd</sup> Street North, a non-section line sand road maintained by Park Township and the applicant. However, the current maintenance arrangement seems to have partially addressed the original traffic concerns.

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

**FARNEY** stated that during that meeting it says they will apply a minimum of twice a year or as needed, who determines as needed?

**LONGNECKER** stated he would defer that question to Mr. **WEBER** with County Public Works.

**JIM WEBER, SEDGWICK COUNTY PUBLIC WORKS**, said he thinks the meeting had good dialogue between the township, the operators and the applicant about how things need to operate in this area. I think we are at a point where, with the conditions that are recommended, where we would contact operators and say the roads are a problem, and you need to treat it. We feel we are at a point

where the township and the operators will work together and stay on top of it. We also discussed something that hasn't happened in the past, by agreeing to put water on the road occasionally to reactivate the dust control material. I don't know if we have a hard schedule as to when treatments would happen, but I think if the dust control has not been at least twice a year or as we feel as needed, we would call them up and have them increase the treatments.

**FARNEY** asked if the citizens have a way to contact the township or you to have that happen.

**WEBER** Because it is enforcement of zoning, calls should go to County Code Enforcement, but if calls are made to us or the township, all of the communication lines are open and if the calls will be addressed.

**ALDRICH** stated the only question he had, in the event based on the track record of the facility, if there are issues and complaints, what are going to be the ramifications if they fail to do what they are required to do with the agreements that were worked out.

**WEBER** stated that they would be in violation of the requirements of the conditional use and the County Code Enforcement department their normal process of enforcement action, tickets and on down the road.

**RUSS EWY, BAUGHMAN COMPANY, AGENT** stated that he thought that meeting that Mr. **WEBER** went very well and answered a lot of our questions from last month. The only thing that I saw in the staff report in which I will ask for your consideration is that it states that the two years shall expire on August 2, 2014, it was my understanding at the previous meeting, and what is typical of conditional uses, is that the time frame would start on the day of final approval, which would be either this Commission today or in a month at County Commission. So I would just like, perhaps a rewording of condition 5 to state that, that our timeline is two years from the date of approval, with another two months for the removal of all equipment related to sand extraction.

**MITCHELL** stated on page two, second paragraph, last line, there's a mistake there also that has August 2<sup>nd</sup> as today's date.

**FRANKLIN LACEY, 9555 W. 73<sup>RD</sup> STREET NORTH**, stated he had a question regarding what the difference is between a County road and a township road.

**WEBER** answered that Sedgwick County is one of the counties in Kansas that has a Township system, as opposed to the unit system and that under the unit system the county is responsible for every rural road. While under the Township system some roads are maintained by the county with the County Commission having the option to assign other rural roads for the township to be maintained. Townships have their own ability to raise taxes, have their own budgets to take care of these roads. In this particular case, 73<sup>rd</sup> is assigned to the Park township road system for maintenance.

**MOTION:** To approve subject to staff recommendation and to change the effective date from when final approval of the case occurs and the date typo.

**MCKAY** moved, **SHEETS** seconded the motion, and it carried (13-0-1).  
**FOSTER** abstained.

- 5) **Case No.: CON2012-00040** – Charles L. Lloyd, Jr., and Quitina L. Lloyd (owner/applicant/agent) request a Conditional Use for an Accessory Apartment on property described as:

Commencing 2027.1 feet South of the Northwest corner, East ½ of the Northeast ¼, thence South 625.45 feet to the southwest Corner, of the East ½, then East 657.22 feet, North 664.11 feet, East 657.73 feet, North 35 feet, West 705.19 feet, South 70.51 feet, West 609.39 feet to the Point of Beginning, Except Road, Section 24-25-2E.

**BACKGROUND:** The applicant is seeking Conditional Use approval for a temporary “accessory apartment” on approximately 10.1 acres zoned RR Rural Residential (“RR”) that are located approximately 1,910 feet south of East 101<sup>st</sup> Street North, west of North 159<sup>th</sup> Street East. The subject tract is an unplatted flag-shaped tract that is currently developed with a double-wide modular type single-family residence, a barn and a shed. The property utilizes a lagoon for its on-site sanitary sewer service. The residence is served by on-site water well for its water service. The applicants are seeking approval to temporarily place a single-wide manufactured home south of the existing residence to allow a family member to reside on-site due to a medical hardship.

Properties located in all directions from the application area are zoned RR. The RR zoned tracts located to the north and east are developed with single-family residences located on tracts ranging in size from 4.65 acres to 10.5 acres. The RR zoned tracts located south, southwest and west of the application area are approximately eighty-acre tracts used for agriculture.

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 subject to supplementary use regulations found at UZC 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.

Unified Zoning Code, Article III, Sections III-D.6.1(3)(a)-(e) of the UZC permits a temporary, accessory manufactured home dwelling unit in the County with Conditional Use approval and subject to the following additional requirements: (a) The location of the manufactured home shall conform to all setback requirements of the district in which it is located. (b) The lot area for the manufactured home need not comply with the area requirements of the zoning district, provided that the unit is connected to a public water supply and a municipal-type sewer system. If the property is not served by a public water supply and municipal-type sewer system, the minimum lot area shall be determined by County Health Department (County Code Enforcement). (c) The unit shall comply with all of the standards of Secs. III-D.6.1(1) and II-D.6.1(2). (d) The applicant shall show due cause that hardship exists and that the hardship cannot reasonably be alleviated without the granting of the Conditional Use. (e) The Planning

Commission shall determine a reasonable time limit for each individual case. The manufactured home shall be removed from the property within 90 days after any change in the circumstances used as a basis for the Conditional Use.

Applicable sections of UZC Sec. III-D.6.1 state that in the unincorporated County, only residential-designed manufactured homes may be placed on individual lots or tracts unless the site meets one of the exemptions described in Secs. III-D.6.1(2-4). Section III-D.6.1(2)(b) states a single-wide manufactured home is permitted if the tract of land is a buildable lot under this code and the applicable Subdivision Regulations and has received a Conditional Use in accordance with Section V-D for the temporary placement of an accessory manufactured home under hardship conditions as provided in Sec. III-D.6.1(3).

Unified Zoning Code Sections III-D.6.1(1)(a)1)-3) state that all manufactured homes installed in the unincorporated portion of Sedgwick County shall: be placed in accordance with the manufactured home siting standards of Sedgwick County, and amendments thereto; provided said standards have been adopted. In the event such standards are not adopted or until such standards, the following shall apply: 1) the manufactured home shall be placed on a permanent enclosed perimeter foundation, or be skirted around the perimeter of the home, within 45 days of the placement of the home, by solid concrete or masonry walls or a material designed to be used as mobile home skirting that does not have a flame spread rating in excess of 25. (The rest of this section provides technical standards regarding skirting and its installation.) 2) The manufactured home shall be provided with handrails on all outside stairs that have a rise of more than 30 inches from grade to finished floor elevation; and 3) the manufactured home shall have any stairs, porches and handrails constructed so as to be structurally sound.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: RR; large-lot single-family residences  
SOUTH: RR; agriculture  
EAST: RR; large-lot single-family residences  
WEST: RR; agriculture

**PUBLIC SERVICES:** The property is located in Harvey County Rural Water District No. 1 service area. 159<sup>th</sup> Street is a sand and gravel road. Along the applicant's frontage, 159<sup>th</sup> Street has only thirty feet of half-street right-of-way. Properties located north and south of the applicant's frontage have fifty feet of half-street right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita and Small Cities 2030 Urban Growth Areas map designates the site as a rural area. Land designated as rural encompass land located outside the 2030 urban growth areas for Wichita and the small cities. The rural category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County and predominately larger lot residential exurban subdivisions with provisions for individual, or community water or sewer services. The application area is located beyond any zoning area of influence boundary.

**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 accessory apartment on the application area. The accessory apartment may be either a single-wide manufactured home or a residential designed manufactured home. 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: zoning, including Article III, Section III-D.6 .a.(1)-(4) and Article III, Section III-D.6.l; 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. If needed for building permit purposes a more detailed site plan that includes dimensions and other site specific details may be required prior to the issuance of any required permits.
3. The Conditional Use shall be effective and in force so long as a medical hardship exists for a family member of someone residing in the principal structure. Per UZC Sec. III-D.6.l(3)(d), the applicant shall provide to County Code Enforcement proof of the existence of a medical hardship with a letter from a health care provider prior to occupancy of the accessory apartment. The accessory apartment shall be removed within 90 days after any change in the circumstances used as the basis for the medical hardship and/or Conditional Use. It is the responsibility of the property owner to advise County Code Enforcement of any change in the circumstances used as the basis for the medical hardship.
4. 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 in all directions from the application area are zoned RR. The RR zoned tracts located to the north and east are developed with single-family residences located on tracts ranging in size from 4.65 acres to 10.5 acres. The RR zoned tracts located south, southwest and west of the application area are approximately eighty-acre tracts used for agriculture. Properties located in the larger area surrounding the application area are predominantly used for agriculture and for large-lot rural homes.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property is zoned RR, which permits by-right one single-family residence per two acres (or 4.5 acres if a lagoon is used). A single-family residence currently exists on the property. As currently zoned, the property could continue to be used as currently developed; however, the site contains over ten acres that could potentially be subdivided to create another residential building site. The Unified Zoning Code allows a second accessory residential unit with Conditional Use approval.
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 potentially be installed without Conditional Use approval but would require platting. The conditions of approval and the size of the site should minimize any anticipated detrimental impacts.

4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Wichita and Small Cities 2030 Urban Growth Areas map designates the site as a rural area. Land designated as rural encompass land located outside the 2030 urban growth areas for Wichita and the small cities. The rural category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County and predominately larger lot residential exurban subdivisions with provisions for individual, or community water or sewer services. The application area is located beyond any zoning area of influence boundary.
5. **Impact of the proposed development on community facilities:** Existing community facilities are more than able to meet projected demand.

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

**JOHNSON** moved, **SHEETS** seconded the motion, approved by a vote of (14-0)

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- 6) **Case No.: PUD2012-00002** - BIG Development Group, LLC c/o Larry Burke (applicant/owner); Baughman Co., PA c/o Russ Ewy (agent) request to Create PUD #38 Indian Hills Planned Unit Development on property described as:

Lots 2, 3 and 4, EXCEPT the north 20 feet of said Lots 2, 3 and 4 dedicated to the public for street purposes; and all of Lot 5, Block 1, Indian Hills Second, Sedgwick county, Kansas.

**BACKGROUND:** The applicants propose replacing the currently B Multi-family Residential (“B”) zoning on this platted property with the proposed PUD #38, the Indian Hills Planned Unit Development (“PUD”), see the attached PUD document. According to the Unified Zoning Code (UZC), a PUD is intended to:

- (1) Reduce or eliminate the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots;
- (2) Allow greater freedom in selecting the means to provide access, light, open space and design amenities;
- (3) Promote quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses; and
- (4) Allow deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this Code.

The applicants’ site was platted with urban scale residential lots along North Tahoe Trail. Prior to the current Zoning Code, B zoning was used as accessory parking for commercial areas, as this application area was used as parking for the commercial development to the north. The applicant now desires to develop this site with storage for the hardware store across the vacated alley to the north. The applicant also desires to provide outdoor storage and display for the hardware store on this site, and provide additional building space for lease to contractors for offices and storage. The applicants’ proposed PUD shows the existing and proposed development, proposed development standards and uses.

North of the application area is LC Limited Commercial (“LC”) zoned Indian Hills shopping center fronting on 13<sup>th</sup> Street North. South and east of the site is an SF-5 Single-family Residential (“SF-5”)

zoned single-family neighborhood. West of the site is B zoning with multi-family development and TF-3 Two-Family Residential (“TF-3”) zoning with single and two-family development.

The applicants’ propose that all uses by right in the GC General Commercial (“GC”) zoning district be permitted with the following exceptions: Auditorium or Stadium, Cemetery, Correctional Placement Residence Limited and General, Day Care, Golf Course, Hospital, Recycling Collection Station Private and Public, Recycling Processing Center, Reverse Vending Machine, Bed and Breakfast Inn, Car Wash, Funeral Home, Hotel or Motel, Kennel, Marine Facility Recreational, Microbrewery, Monument Sales, Nightclub, Recreation in the City – Indoor and Outdoor, Recreational Vehicle Campground, Rodeo in the City, Riding Academy or Stable, Sexually Oriented Business, Tattooing and Body Piercing Facility, Tavern or Drinking Establishment, Vehicle and Equipment Sales, Asphalt or Concrete Plant, Vehicle Storage Yard, Pawnshop, and offices that accept paycheck or car titles as security for loans.

Signage is limited to the NO Neighborhood Office (“NO”) district limitations with one 96-square foot, 16-foot tall monument sign along Meridian. The following signs are prohibited: billboards, off-site, portable, animated, flashing, moving, interior window display, banners, commercial balloons, commercial flag, pennant, electronic message, roof and temporary. Building signs are prohibited on the south and west building facades.

Proposed setbacks are 35 feet, parking is to be provided per the UZC. Light poles are limited to 15 feet in height and shielded downward. Utilities are to be installed underground. Landscaping is required per the City Landscape Code. All screening is required per the UZC. Mature trees along Tahoe Trail will be maintained and used towards the landscaping and screening requirement. Buildings in the PUD shall share architectural character, color and texture, and shall be primarily earth-tone colors. Outdoor display is prohibited within 50 feet of the south or west property lines, outdoor storage shall only be where noted on the PUD document.

**CASE HISTORY:** The property was platted as Lots 2-5 of the Indian Hills 2<sup>nd</sup> Addition in 1952.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC	Retail commercial
SOUTH:	SF-5	Single-family residences
EAST:	SF-5	Single-family residences
WEST:	B, TF-3	Multi and single-family residences

**PUBLIC SERVICES:** The site has frontage on Meridian Avenue, a paved, two-lane collector street with 50 feet of half-width right-of-way at this location. All other utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Wichita-Sedgwick County Comprehensive Plan identifies the site as appropriate for “Local Commercial” development. The Local Commercial category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines recommend that commercial traffic does not access residential streets. The Commercial Locational Guidelines of the Comprehensive Plan also recommend that commercial sites have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

**RECOMMENDATION:** Based information available prior to the public hearing, staff recommends the request be **APPROVED**. This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** North of the application area is LC zoned Indian Hills shopping center fronting on 13<sup>th</sup> Street North. South and east of the site is an SF-5 zoned single-family neighborhood. West of the site is B zoning with multi-family development and TF-3 zoning with single and two-family development.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be developed as zoned with any level of residential development or medical office uses.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Under the current zoning, this site has been an under-utilized parking lot for many years. The proposed PUD would allow storage, display, office, and commercial uses not currently permitted. The proposed conditions of the PUD should mitigate any negative impacts on the surrounding residential areas.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies:** The 2030 Wichita Functional Land Use Guide of the Wichita-Sedgwick County Comprehensive Plan identifies the site as appropriate for “Local Commercial” development. The Local Commercial category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines recommend that commercial traffic does not access residential streets. The Commercial Locational Guidelines of the Comprehensive Plan also recommend that commercial sites have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
5. **Impact of the proposed development on community facilities:** Development on this site could increase traffic on this portion of Meridian. However, the scale of the site and scale of the proposed development should not generate a noticeable increase in traffic.

JESS MCNEELY, Planning Staff presented the Staff Report.

MCNEELY added that the DAB VI heard this case last night and that some of the people from last night’s meeting were here but left. Planning staff recommended approval of the Planned Unit Development as proposed and the District Advisory Board approved subject to some changes. Their recommendations that all uses permitted in the NR Neighborhood Retail zone district, plus outdoor storage, display and warehousing, ancillary to the uses occurring in the PUD and in the lot immediately north of the site. They also recommended solid screening along the Tahoe Trail tree line, instead of or in conjunction with the tree line which was proposed to be the screening for the development.

SCHLEGEL asked if that is now staff’s recommendation.

MCNEELY stated that the staff recommendation has not changed, but thought it was important with some of the neighbors who took a long time at the DAB, so I thought to give you that information this evening.

DENNIS asked why does staff not agree with the changes that were recommended at the DAB.

MCNEELY said that we are sticking by our staff report; we worked with the agent going into this request. When the property owner came to us looking to be able to do a little storage for the Ace

Hardware, and to be able to rent to contractors for their offices and storage, we looked at that as GC uses and we recommended that they do a Planned Unit Development. So we have been working with the applicant from the beginning and we were comfortable with our original recommendation. I think the recommendation of the solid screening in conjunction with the tree row along Tahoe Trail, we have the capability to achieve the landscape screening through landscaping. It's not completely solid, but I think to put a solid fence across that entire curve of Tahoe Trail, that was one neighbor's opinion, but I think the professionals that did the Planned Unit Development knew you could meet the screening requirement through landscaping, which would probably be a better neighborhood amenity than a solid fence instead.

**MILLER** stated that the zoning screening requires a solid screening, whether it's a fence or landscaping. It has to be solid.

**MCNEELY** stated correct.

**FOSTER** stated that looking at the PUD plan, what caught my attention; number one is outdoor display area north of the building there. The proposed building is proposed to be used for what?

**MCNEELY** answered that he would like the applicant to answer that, but that the applicants explained to us that they intended to use it for storage for the adjacent commercial use, for contractor's offices and storage and any retail that may choose to lease space out of this proposed building.

**FOSTER** asked what ancillary parking for this area means?

**MCNEELY** answered that is parking for the proposed building in the PUD, and it will continue as it has for the past 20 or 30 years to be ancillary parking for the existing neighborhood shopping center immediately north of here.

**FOSTER** asks what kind of surface would there be?

**MCNEELY** stated that there is already an asphalt surface. This entire site is paved and has been for many years.

**FOSTER** stated that the main thing that caught his attention is that there is a line on the bottom that says "proposed screening fence" and that line continues on across the drives, across the entire frontage and continues along the alley. In other words, it goes along the whole site, so I interpret that means they are going to fence the whole area, which didn't make a lot of sense. So, what are they really going to fence?

**MCNEELY** answered the proposed screening fence; I believe you would be referring to the note on the plan. I could speak with Russ on this, but as I understand it, that proposed screening fence would just be along that 144-foot side lot, because if you look along the curve on Tahoe Trail it notes the existing buffer.

**ALDRICH** asked for staff to repeat DAB's comments.

**MCNEELY** answered that their recommendation was to approve subject to the following revisions; all uses permitted in the NR Neighborhood Retail zone district, plus outdoor storage, display and warehousing, ancillary to the uses occurring on Lot 1 of the Indian Hills Second Addition and Parcel 1

of the PUD. Item two would require solid screening along Tahoe Trail tree line in lieu of or in conjunction with the existing tree line.

**MITCHELL** asked what the staff recommendation of screening was.

**MCNEELY** answered as submitted, with landscaping and not with a fence.

**MITCHELL** asked that that are proposing additional planting where the trees are now.

**MCNEELY** stated yes to achieve the zoning code definition of screening.

**RUSS EWY, BAUGHMAN COMPANY, AGENT** stated that they are in agreement with staff comments and would answer any questions.

**ALDRICH** stated that they are in support of staff's comments and not DAB's comments, correct?

**EWY** answered that is correct.

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

**MITCHELL** moved, **ALDRICH** seconded the motion, approved by a vote of (10-0)

- 7) **Case No.: ZON2012-00023** - DeWitt Land Co., Inc. (Mike DeWitt) / Baughman Company, P.A. (Phil Meyer) request a City zone change from SF-5 Single-Family Residential to LI Limited Industrial on property described as:

North 348 feet of the West ½ of the Southwest ¼, except go the West 50 feet for road. Sec 35-27-1W.

**BACKGROUND:** The application area is located on the east side of South Hoover Street, approximately one-half mile south of West Harry Street, contains approximately 3.84 unplatted acres and is zoned SF-5 Single-family Residential ("SF-5"). The applicant has requested the site be rezoned to LI Limited Industrial ("LI"). The property currently has a vacant residential structure and some accessory buildings; however, when staff visited the site it appeared that the residential structure was being prepared to be moved.

Land located to the north is currently zoned SF-5 but has been approved for LI zoning, and is developed with an industrial warehouse. Two parcels of land located south of the subject site are zoned SF-5, and appear to be used for residential and agricultural purposes. The Wichita-Valley Center Floodway is located east of the subject property, and is unzoned. Land to the west is zoned LI and is used for warehousing or airport or aircraft related facilities. Except for the two parcels located south of the application area, all of the land fronting Hoover, between K-42 Highway on the south and Pueblo Drive located to the north are zoned or are approved for LI zoning.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: SF-5, approved for LI; Cessna warehouse  
SOUTH: SF-5; outside storage  
EAST: Unzoned; the Wichita-Valley Center Floodway  
WEST: LI; airport/aircraft related facility

**PUBLIC SERVICES:** Hoover Street has 100 feet of full right-of-way, and is a paved four-lane arterial. The property is served by public services or they can be extended from nearby locations.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts the site as being appropriate for “employment/industry center,” which is defined as areas with uses that constitute centers or concentrations of employment or an industrial, manufacturing, service or non-institutional nature.

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

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood:** Land located to the north is currently zoned SF-5 but has been approved for LI zoning, and is developed with an industrial warehouse. Two parcels of land located south of the subject site are zoned SF-5, and appear to be used for residential and agricultural purposes. The Wichita-Valley Center Floodway is located east of the subject property, and is unzoned. Land to the west is zoned LI and is used for warehousing or airport or aircraft related facilities. Except for the two parcels located south of the application area, all of the land fronting Hoover, between K-42 Highway on the south and Pueblo Drive located to the north are zoned or are approved for LI zoning.
- 2. The suitability of the subject property for the uses to which it has been restricted:** The property is currently zoned SF-5. Given the extensive LI zoning that already exists along the Hoover Road corridor between K-42 Highway and Pueblo Drive, the site’s SF-5 zoning is out of character with the larger neighborhood and is not a preferred zoning pattern.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property:** The vast majority of the property fronting Hoover, between K-42 Highway and Pueblo Drive, is zone LI; therefore, approval of LI zoning on this site will not introduce zoning or uses not already present or potentially allowed on nearby properties.
- 4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Denial would probably represent a loss of economic return or limit the applicant’s ability to use the site as planned.
- 5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide map depicts the site as being appropriate for “employment/industry center,” which is defined as areas with uses that constitute centers or concentrations of employment or an industrial, manufacturing, service or non-institutional nature.

6. **Impact of the proposed development on community facilities:** Existing community facilities are in place or will be guaranteed during platting.

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

**JOHNSON** moved, **SHEETS** seconded the motion, approved by a vote of (14-0)

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- 8) **Case No.: ZON2012-00024/CUP2012-00021** - Curtis W. & Karen S. Rink and Leo M. & Vivian L. Rink (owners) Kimley-Horn & Associates, Inc. c/o Kevin Gaskey (agent) request a city zone change from SF-5 and SF-20 Single-Family Residential to LC Limited Commercial and Creation of the Maize and 29th Commercial Community Unit Plan CUP DP-327 on property described as:

Tract 1: The Southwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas,

EXCEPT A tract described as beginning at the Northwest corner of the South half of the Southwest Quarter; thence East along the North line of the South half of the Southwest Quarter 410.25 feet; thence South parallel with the West line of said South half of the Southwest Quarter 315 feet; thence East parallel to the North line of the South half of the Southwest Quarter 211 feet; thence South parallel with the West line of the South half of the Southwest Quarter 198.75 feet; thence West 621.25 feet to a point in the West line of the Southwest Quarter; thence North 513.75 feet to the point of beginning, in Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas;

AND EXCEPT Part of the Southwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence N 0°00' E along the West line of said Southwest Quarter 1315.39 feet to the Northwest corner of the South half of said Southwest Quarter; thence N 89°47'23" E along the North line of said South half 160 feet to a point of beginning, said point being the Easterly right of way of Maize Road; thence N 2°10'38" W along the Easterly right of way of Maize Road 316.44 feet; thence S 89°40'51" E 617.16 feet; thence S 89°40'51" E 617.16 feet; thence S 0°00' E 647.76 feet; thence S 0°03'54" E 111.85 feet; thence S 84°40'41" W 122.59 feet; thence S 6°37'38" E 54.11 feet; thence S 89°47'23" W 28.19 feet to a point 621.25 feet East of the West line of said Southwest Quarter; thence N 0°00' E parallel with the West line of said Southwest Quarter 198.75 feet; thence S 89°47'23" W 211 feet; thence N 0°00' E 315 feet; thence S 89°47'23" W along the North line of said South half 250.25 feet to the point of beginning;

AND EXCEPT a tract described as commencing at the Southwest corner of the East half of the South half of said Southwest Quarter; thence N 90°00'00" W (assumed) along the South line of said Southwest Quarter 140.00 feet; thence N 00°00'00" E 626.16 feet; thence S 90°00'00" E 626.16 feet; thence S 00°00'00" W 626.16 feet; thence N 90°00'00" W 486.16 feet to the point of beginning;

AND EXCEPT a tract described as commencing at the Southwest corner of the East half of the South half of said Southwest Quarter; thence N 90°00'00" W (assumed) along the South line of said Southwest Quarter 140.00 feet to the point of beginning, being the Southwest corner of a

tract of land recorded in the Register of Deeds Office on Warranty Deed in Film 1207 Page 248; thence along the South line of said Section N 90°00'00" W 40 feet; thence N 00°00'00" E 626.16 feet; thence N 90°00'00" E 40 feet to the Northwest corner of said Deed; thence S 00°00'00" W 626.16 feet along the West line of said Deed to the point of beginning;

AND EXCEPT that portion of said Southwest Quarter platted as Fox Ridge Addition and Fox Ridge 2nd Addition

Tract 2: Part of the Southwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence N 0°00' E along the West line of said Southwest Quarter 1315.39 feet to the Northwest corner of the South half of said Southwest Quarter; thence N 89°47'23" E along the North line of said South half 160 feet to a point of beginning, said point being the Easterly right of way of Maize Road; thence N 2°10'38" W along the Easterly right of way of Maize Road 316.44 feet; thence S 89°40'51" E 617.16 feet; thence S 89°40'51" E 617.16 feet; thence S 0°00' E 647.76 feet; thence S 0°03'54" E 111.85 feet; thence S 84°40'41" W 122.59 feet; thence S 6°37'38" E 54.11 feet; thence S 89°47'23" W 28.19 feet to a point 621.25 feet East of the West line of said Southwest Quarter; thence N 0°00' E parallel with the West line of said Southwest Quarter 198.75 feet; thence S 89°47'23" W 211 feet; thence N 0°00' E 315 feet; thence S 89°47'23" W along the North line of said South half 250.25 feet to the point of beginning;

AND

Tract 3: A tract described as beginning at the Northwest corner of the South half of the Southwest Quarter; thence East along the North line of the South half of the Southwest Quarter 410.25 feet; thence South parallel with the West line of said South half of the Southwest Quarter 315 feet; thence East parallel to the North line of the South half of the Southwest Quarter 211 feet; thence South parallel with the West line of the South half of the Southwest Quarter 198.75 feet; thence West 621.25 feet to a point in the West line of the Southwest Quarter; thence North 513.75 feet to the point of beginning, in Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas;

AND

Part of the Southwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence N 0°00' E along the West line of said Southwest Quarter 1315.39 feet to the Northwest corner of the South half of said Southwest Quarter; thence N 89°47'23" E along the North line of said South half 160 feet to a point of beginning, said point being the Easterly right of way of Maize Road; thence N 2°10'38" W along the Easterly right of way of Maize Road 316.44 feet; thence S 89°40'51" E 617.16 feet; thence S 89°40'51" E 617.16 feet; thence S 0°00' E 647.76 feet; thence S 0°03'54" E 111.85 feet; thence S 84°40'41" W 122.59 feet; thence S 6°37'38" E 54.11 feet; thence S 89°47'23" W 28.19 feet to a point 621.25 feet East of the West line of said Southwest Quarter; thence N 0°00' E parallel with the West line of said Southwest Quarter 198.75 feet; thence S 89°47'23" W 211 feet; thence N 0°00' E 315 feet; thence S 89°47'23" W along the North line of said South half 250.25 feet to the point of beginning.

**BACKGROUND:** The applicant is seeking LC Limited Commercial (“LC”) zoning subject to the development standards contained in the proposed Maize and 29th Commercial Community Unit Plan (“CUP”) DP-327. At the time of the application the 38.09-acre site was zoned SF-5 Single-Family Residential (“SF-5”, Wichita zoning) and SF-20 Single-Family Residential (“SF-20” Sedgwick County zoning). On September 11, 2012, the Wichita City Council approved the owner’s application for the SF-20 zoned portion of the site to be annexed into the City of Wichita, thus changing its zoning to SF-5. The Unified Zoning Code (UZC) recommends a CUP or a PO Protective Overlay (“PO”) for LC and GC General Commercial (“GC”) zoned sites of 6-acres or more, that are held under unified control at the time of initial approval. A CUP is intended to provide well planned and well organized residential, commercial and mixed development.

The site is located on the northeast corner of the 29<sup>th</sup> Street North and Maize Road intersection. The site is currently developed with two farmhouses (built 1948 and 1950) and numerous accessory agricultural buildings. There are extensive mature, mixed tree hedges planted around the farm buildings. There is also another 70-90-foot wide mature mixed tree hedge located along most of the north end of the site, where it abuts SF-5 zoned single-family residences.

The 29<sup>th</sup> Street North and Maize Road intersection is an area where the City limits of Wichita and Maize abut each other and the SF-20 zoned lands still located in Sedgwick County. West of the site across Maize Road (in Wichita), there are five large tract, SF-5 zoned single-family residences; built 1979-1991. Also located west of Maize Road, there is one large tract single-family residence (1999) and urban scale single-family residences (platted November 16, 1956) located in Maize. Further west there are 38.2-acres of undeveloped GO General Office (“GO”) zoned land, more SF-5 zoned single-family residences, and single-family residences and agricultural land located in Maize. The SF-5 zoned Fox Ridge single-family residential subdivision (platted July 8, 2003) abuts all of the north side of the site and most of the east side of the site. The Fox Ridge subdivision has two ways in and out of it, one on Maize Road and another on its east end at Tyler Road; via Westlake Parkway, a residential collector street. A large tract SF-5 zoned single-family residence (1995) abuts the south most portion of the east side of the site.

North of the Fox Ridge subdivision is the approximately 187-acre SF-5 zoned USD 266 Maize School District’s educational complex and 35.63-acres of undeveloped SF-5 zoned land that was approved for LC zoning, but has not been replatted to secure the commercial zoning; ZON2011-38/CUP2011-42. A partially developed approximately 36-acre LC and GC zoned site, anchored by the big box retail home improvement Menards store (ZON2006-0007/CUP DP-295) finishes out development north to 37<sup>th</sup> Street North with another approximately 24-acres of undeveloped LC zoned land located northwest across Maize Road and 37<sup>th</sup> Street North.

South of the site, across 29<sup>th</sup> Street North, is a farmstead located on a SF-20 zoned remnant of Cadillac Lake (most of it within a FEMA Flood Zone) and an undeveloped LC zoned land. Between 29<sup>th</sup> and 21<sup>st</sup> Streets North, Maize Road is pretty much striped out with LC and GC zoned lands, most of them with CUP or PO overlays. Almost all of these LC and GC zoned lands are developed or are developing, with big box retail such as Wal-Mart, Target, Lowes, Academy and a super Dillon’s, or free standing retail and retail strips, many with national and local commercial chains tenants. The exception to this concentration of LC and GC zoned commercial activity on this section of Maize Road between 21<sup>st</sup> and 29<sup>th</sup> Streets is the mid-mile located, SF-5 zoned Chadsworth 1<sup>st</sup> and 2<sup>nd</sup> Additions (1990 & 1992), which has single-family residences’ back yards abutting Maize. The Chadsworth Additions have access to 21<sup>st</sup> Street North and Maize Road.

The applicant proposes all LC uses permitted by right except: adult entertainment/sexually oriented business, correctional placement residence, night clubs, taverns and drinking establishments. The applicant proposes restaurants with drive thru windows with no lights shining into single-family development, convenience stores, service stations and limited vehicle repair (with the exception of tire and battery service) are allowed if located more than 200 feet from residential uses. The 200 feet is measured from the building to the nearest residential zoning. The applicant also proposes that any overhead doors associated with limited vehicle repair (again with the exception of tire and battery service) must not face residential zoning. The applicant proposes to allow outdoor audio systems but requires that their sound not project beyond the boundaries of the CUP.

The applicant proposes 40-foot tall (including base and fixtures) light poles; the UZC has a 15-foot height limit when light poles are located within 200 feet residential zoning, which applies to this site. Proposed maximum building coverage is the CUP standard 30 percent. Proposed maximum building height is 35 feet, which meets the UZC's compatibility height standards. Proposed screening is a 6-foot tall concrete/masonry wall or a 3-foot tall earthen berm along the site's north and east sides, where it abuts SF-5 zoned single-family residences. Proposed Landscaping is per the Landscape Ordinance. The UZC requires a 6-8 foot tall masonry wall or landscaping that can meet solid screening standards, along the site's north and east side. Solid screening is proposed to be provided around all outdoor work and storage areas when located within 200 feet of residential uses, and around trash receptacles, loading areas, and roof top mechanical equipment. The UZC has restrictions on outdoor storage in the LC zoning district. The applicant has provided the standard architectural requirements. The CUP proposes signage per the sign code with additional standards.

The CUP plan shows seven parcels, the larger Parcels 1 and 7 and the smaller Parcels 2, 3, 4, 5 and 6. The larger parcels abut the SF-5 zoned single-family residences located on its north and east sides. The smaller out parcels have 29<sup>th</sup> Street North and Maize Road frontage. The plan shows the CUP minimum 35-foot setback along 29<sup>th</sup> and Maize and a substandard 30-foot setback along its north side and most of its east side where it abuts SF-5 single-family residences. The proposed CUP's setbacks either exceed or are less than the minimum standard for a CUP.

**CASE HISTORY:** The site is not platted and a portion of it is located in the County. On September 11, 2012, the City Council approved the owner's application for annexation of the SF-20 zoned County portion of the site into the City of Wichita. The County does not provide water or sewer, but annexation will allow the site to have Wichita water and sewer services. The SF-5 zoned portions of the site appear to have been annexed around 2003. There have been numerous protest or concerns expressed about the proposed rezoning by residence of the abutting SF-5 zoned Fox Ridge subdivision. Staff has copied these e-mails for the MAPC to review.

Many people attended the September 10, 2012 DAB V meeting. Comments ranged from no zone change to modifying the proposed CUP. DAB V recommended approval of the zone change and the CUP per staff's recommendations, which are pretty much reflected in this report. Staff also told everyone attending the DAB meeting that they expected another (3<sup>rd</sup>) revised CUP and thus changes to the CUP; staff has not received the 3<sup>rd</sup> version of the CUP at the time of this mail out.

**ADJACENT ZONING AND LAND USE:**

NORTH: SF-5, LC

Single-family residential subdivision, undeveloped lands, large public school complex, large box retail

SOUTH: LC, GC, SF-20, SF-5      Undeveloped land, farmstead, multiple large box retail, stand alone commercial, retail strips, and single-family residential subdivision  
EAST: SF-5,      Single-family residential subdivision, large tract single-family residence  
WEST:SF-5, City of Maize, GO      Large tract single-family residences, single-family residential subdivisions, undeveloped land, agricultural land

**PUBLIC SERVICES:** Access to the site is provided by the four-lane, minor arterial street 29<sup>th</sup> Street North and the four-lane, principle arterial street Maize Road; WAMPO Federal Roadway Functional Classification. 29<sup>th</sup> has center turn lanes, while only the south side of Maize has a center turn lane. This intersection has traffic lights. 29<sup>th</sup> Street has a full raised median with cuts for access running parallel to the south side of the site. Traffic counts range from 12,000-10,000 trips per day on Maize and 2,700-4,550 trips per day on 29<sup>th</sup>. Projected traffic volumes for 2035 under the build scenario from the WAMPO travel demand model shows traffic counts ranging from 19,150-18,660 trips per day on Maize and 8,900-9,430 trips per day on 29<sup>th</sup>. All utilities are available to the site. The southwest corner of the site is located within a FEMA Flood Zone.

**CONFORMANCE TO PLANS/POLICIES:** The ‘2030 Land Use Guide of the Comprehensive Plan’ (Plan) identifies the site as “local commercial.” 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. Typical uses include medical or insurance offices, auto repair, service stations, grocery stores, florist shops, restaurants and personal services. The UZC identifies NR Neighborhood Retail (“NR”) and LC zoning as being generally compatible with the Plan’s local commercial category. The size of the site, approximately 38.09-acres, and the design of the site’s CUP are similar to the existing commercial development patterns located in the Maize Road corridor, which is stand alone retail and strip retail anchored by big box retail such as Wal-Mart, Target, Lowes and Menards. The CUP’s two largest parcels, Parcels 1 and 7, are large enough for big box retail. The Plan’s local commercial category does not list big box retail as a use, however the Plan’s “regional commercial” category does list big box retail as a use. The regional commercial category lists uses that have a regional market draw, can generate high traffic volume and are located in close proximity to major arterials or freeways. The UZC does not list big box retail, strip retail or stand alone retail as use types, but bundles them together in the definition of “retail, general”; UZC SecIII.D, ‘Use Regulations’ and Sec.II.B.11.1. The LC zoning request conforms to the local commercial category, but the size of the site and the site’s CUP’s design suggest regional commercial types of development, similar to what is currently lining this portion of Maize Road. The site’s location along Maize Road, a principle/major arterial, the minor arterial 29<sup>th</sup> Street North, and its having no vehicular access through residential streets or neighborhoods meets the location criteria of the Comprehensive Plan for regional commercial development. Additional right-of-way for road improvements, Ingress and egress onto Maize Road and 29<sup>th</sup> Street North will be determined at the time of a platting.

The UZC recommends a CUP or a PO for LC and GC zoned sites of 6-acres or more, that are held under unified control at the time of initial approval. A CUP is intended to provide well planned and well organized residential, commercial and mixed development.

**RECOMMENDATION:** There has been extensive dialogue between the applicant, the neighbors and staff about the design and uses of the proposed CUP, including the applicant meeting with a neighborhood group (Staff was not invited) late Wednesday, September 12. At the time of this report

there has been no revised CUP submitted to staff for review or comment, therefore staff recommends a Deferral, to allow time for staff's review and recommendation.

However if the MAPC finds there is sufficient information for a recommendation staff recommends Approval, subject to platting within one-year and (but not limited to) the additional following development standards:

- A. In reference to General Provision 4 and the CUP drawing, include; "A platted reserve for landscaping, drainage retention and utilities shall be established on the north end of the CUP, where it is now abutting Reserves C and G and the rear yards of Lots 6-13, Block 4, Fox Ridge Addition. It shall be 120 feet wide, which is wide enough to contain and preserve the existing mature mixed tree hedge and provide a buffering space similar to the other proposed reserves on the subject site. The final approved drainage plan could change the width of this platted reserve but it will not be less than 120 feet wide. This existing mature mixed tree hedge shall be required landscaping and must be maintained and replaced as needed. This platted reserve shall also serve as the CUP's setback on this portion of the site; this waives compatibility setback standards. A platted reserve for landscaping, utilities and drainage retention shall be established along northeast and east portion of the CUP, where it abuts Reserve G, Fox Ridge Addition. The inside 5 feet of this reserve shall allow light poles as specified in this CUP and a wrought iron fence. This platted reserve shall be a minimum of 90 feet wide and shall serve as the setback; this waives compatibility setback standards. There shall be a 60-foot wide platted reserve for landscape, utility and drainage established along that portion of CUP where it abuts the unplatted SF-5 single-family residence that abuts the CUP's south most east side. These platted reserves will retain their current SF-5 zoning.
- B. General Provision 6 shall read as; A. Each parcel is permitted one free standing sign per arterial frontage, with the exceptions as noted on Parcels 1 & 7..." with the following restrictions."; B. to 150 feet apart; be more specific on C, and; clarify C.
- C. General Provision 8 shall read; "All lighting shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Sec. IV, unless otherwise specified. All lighting shall be shielded to direct light disbursement in a downward direction and away from residential areas/zoning.
- D. General Provision 9.A shall read as; There is a 15-foot height limit (including fixtures, lamps and base) when light poles are located within 200 feet residential zoning. All other light poles shall have a 27-foot height limit.
- E. General Provision 11.A. shall read as; "Development of all parcels within the CUP shall comply with the Landscape Ordinance of the City of Wichita for street yard, parking lots (including landscape islands located with the parking lot) and buffers, unless otherwise specified for an increase to the minimum standard and shall be of a shared palette of landscape materials among parcels and reserves.
- F. General Provision 12 to shall read as; "A 6-8 foot tall masonry or a concrete wall designed to look like a masonry wall (as reviewed and approved by the Planning Director) shall be provided along the north and east sides of the site where it abuts SF-5 zoned property. The approved wall shall be placed behind the CUP's landscape and landscape drainage reserves/setbacks, so that the landscape and landscape drainage reserves/setbacks are located between the wall and the abutting SF-5 zoned property. The height of the wall shall be measured from the high point of the abutting SF-5 property to ensure its 6-8 feet begins at that high spot and is carried throughout the CUP. A landscaped berm may be used to meet this standard, upon review and approval by the Planning Director."

- G. General Provision 12.C shall read as; “Outdoor storage and outdoor display shall be subject to all conditions of Sec.II.B.14 of the Wichita-Sedgwick County Unified Zoning Code. No outdoor work on motor vehicles.”
- H. General Provision 14 shall add; “The predominate building material for all buildings over 100 feet long and/or 100 feet wide will be a mix of architectural block that will break up the surface of each of the buildings in the CUP. Architectural embellishments will also be used to break up the surface of these buildings. All to be reviewed and approved by the Planning Director.”
- I. General Provision 16 shall read as; “All use permitted by right in the LC Limited Commercial zoning district except sexually oriented business, correctional placement residence, night clubs, taverns and drinking establishments, outside storage, asphalt and concrete plant, limited, cemetery, offices that accept paycheck or car titles as security for loan, and pawnshops. Restaurants with drive thru windows or drive in service, convenience stores, service stations and vehicle repair, limited are allowed if located more than 300 feet from residential uses located on the north and east sides of the site. Overhead doors associated with vehicle repair, limited and general, warehouses and tire and battery sales and loading docks must not face the abutting north and east residential zoning districts. No uses requiring Conditional Use approval are allowed unless specifically permitted.”
- J. Change all permitted uses in the Parcel descriptions to refer to the above Revised General Provision 16.
- K. General Provision 22 shall add; “Pedestrian access to the CUP shall include at least one path to Reserve G, Fox Ridge Addition.
- L. Add to the General Provisions; “A notice of a CUP noting the conditions placed on this land shall be filed with the Sedgwick County Register of Deeds.”
- M. Add to the General Provisions; “No vehicles larger than a pickup is permitted to park and idle over night within 400 feet of adjacent residential properties.”
- N. Add to General Provision 12; “The screening requirements of the Wichita-Sedgwick County Unified Zoning Code, Sec. IV-B.e shall be in effect unless other wised noted. Screening of loading areas shall be tall enough and long enough to cover the largest trucks and trailers unloading on the site. Provide an exhibit for review and approval by the Planning Director.
- O. Add to General Provisions; “Trash pickup will be between 7 a.m. and 7 p.m.”
- P. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings and the last CUP staff had for review:

1. **The zoning, uses and character of the neighborhood:** The 29<sup>th</sup> Street North and Maize Road intersection is an area where the City limits of Wichita and Maize abut each other and the SF-20 zoned lands still located in Sedgwick County. West of the site across Maize Road (in Wichita), there are five large tract, SF-5 zoned single-family residences; built 1979-1991. Also located west of Maize Road, there is one large tract single-family residence (1999) and urban scale single-family residences (platted November 16, 1956) located in Maize. Further west there are 38.2-acres of undeveloped GO General Office (“GO”, Wichita) zoned land, more SF-5 zoned single-family residences (Wichita), and single-family residences and agricultural land located in Maize. The SF-5 zoned (Wichita)Fox Ridge single-family residential subdivision (platted July 8, 2003) abuts all of the north side of the site and most of the east side of the site. The Fox Ridge subdivision has two ways in and out of it, one on Maize Road and another on its east end at Tyler

Road; via Westlake Parkway, a residential collector street. A large tract SF-5 zoned (Wichita) single-family residence (1995) abuts the south most portion of the east side of the site.

North of the Fox Ridge subdivision is the approximately 187-acre SF-5 zoned (Wichita) USD 266 Maize School District's educational complex and 35.63-acres of undeveloped SF-5 zoned land (Wichita) that was approved for LC zoning, but has not been replatted to secure the commercial zoning; ZON2011-38/CUP2011-42. A partially developed approximately 36-acre LC and GC General Commercial ("GC") zoned site, anchored by the big box retail home improvement Menards store (ZON2006-0007/CUP DP-295) finishes out development north to 37<sup>th</sup> Street North with another approximately 24-acres of undeveloped LC zoned land located northwest across Maize and 37<sup>th</sup>.

South of the site, across 29<sup>th</sup> Street North, is a farmstead located on a SF-20 zoned remnant of Cadillac Lake (most of it within a FEMA Flood Zone) and an undeveloped LC zoned land. Between 29<sup>th</sup> and 21<sup>st</sup> Streets North, Maize Road is pretty much striped out with LC and GC zoned lands, most of them with CUP or PO overlays. Almost all of these LC and GC zoned lands are developed or are developing, with big box retail such as Wal-Mart, Target, Lowes, Academy and a super Dillon's, or free standing retail and retail strips, many with national and local commercial chains tenants. The exception to this concentration of LC and GC zoned commercial activity on this section of Maize Road between 21<sup>st</sup> and 29<sup>th</sup> Streets is the mid-mile located, SF-5 zoned Chadsworth 1<sup>st</sup> and 2<sup>nd</sup> Additions, which has single-family residences' back yards abutting Maize. The Chadsworth Additions have access to 21<sup>st</sup> Street North and Maize Road.

2. **The suitability of the subject property for the uses to which it has been restricted:** The currently SF-5 and SF-20 zoned site could be developed as single-family residential, upon platting. Platting would require the SF-20 portion of the site to be annexed into the City of Wichita, after which the County SF-20 zoning would become SF-5. Annexation would provide the site with the City of Wichita's water and sewer. A single-family residential subdivision could be designed similar to the abutting Fox Ridge Addition that could feature landscaped buffers and reserves that would minimize the impact of any future adjacent commercial development. However, the site's location at the intersection of a principle/major arterial, Maize Road, and a minor arterial, 29<sup>th</sup> Street North, coupled with the prevailing commercial zoning and development of Maize Road from 21<sup>st</sup> Street North to 37<sup>th</sup> Street North makes the site a potential commercial development, much like the current commercial development along this portion of Maize Road.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed 38.09-acres of commercial development replacing the existing farmhouses will have unavoidable detrimental impact on the existing single-family development. Traffic will increase no matter what replaces the farmhouses, with commercial/retail traffic likely to generate the highest volume of traffic. The design of the proposed CUP is critical in providing buffering between the commercial activities on the site and the abutting sing-family residences.
4. **Length of time the property has remained vacant:** The site has been developed with the two farmhouses and numerous accessory agricultural buildings since at least between 1948 and 1950.

5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The ‘2030 Land Use Guide of the Comprehensive Plan’ (Plan) identifies the site as “local commercial.” 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. Typical uses include medical or insurance offices, auto repair, service stations, grocery stores, florist shops, restaurants and personal services. The UZC identifies NR and LC zoning as being generally compatible with the Plan’s local commercial category. The size of the site, approximately 38.09-acres, and the design of the site’s CUP are similar to the existing commercial development patterns located in the Maize Road corridor, which is stand alone retail and strip retail anchored by big box retail such as Wal-Mart, Target, Lowes and Menards. The Plan’s local commercial category does not list big box retail as a use, however the Plan’s “regional commercial” category does list big box retail as a use. The regional commercial category lists uses that have a regional market draw, can generate high traffic volume and are located in close proximity to major arterials or freeways. The UZC does not list big box retail, strip retail or stand alone retail as use types, but bundles them together in the definition of “retail, general”; UZC SecIII.D, ‘Use Regulations’ and Sec.II.B.11.I. The LC zoning request conforms to the local commercial category, but the size of the site and the site’s CUP’s design suggest regional commercial types of development, similar to what is currently lining this portion of Maize Road. The site’s location along Maize Road, a principle/major arterial and its having no vehicular access through residential streets or neighborhoods meets the location criteria of the Comprehensive Plan for regional commercial development. Ingress and egress onto Maize Road and 29<sup>th</sup> Street North will be determined at the time of a platting.

The UZC recommends a CUP or a PO for LC and GC zoned sites of 6-acres or more, that are held under unified control at the time of initial approval. A CUP is intended to provide well planned and well organized residential, commercial and mixed development. As proposed the CUP’s development standards provide little or no buffering for the abutting and adjacent single-family residences. There are examples of existing buffering in the area that can be applied to this site.

6. **Impact of the proposed development on community facilities:** The project will generate increased traffic and demand for utilities and City supplied services; however, these demands would occur upon any development of the property and they can be met by existing or planned improvements.

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

**DENNIS** stated he believes everyone on the board had received ex-parte contact by email or other means, and we need to declare that for the entire board. Staff has asked to defer this case, but we have an entire room full of folks here today for this case. My concern is with all the people here I don’t think that it is fair to those who took off of work and so forth to ask them to come back again. So I’m going to ask the Commissioners what their thoughts are on this subject.

**G. SHERMAN** stated he had a question for staff. I know in the past when we’ve had big crowds, we would hear everything, but defer on giving a recommendation to give staff time to work things out.

**SCHLEGEL** stated that we would recommend that you do that. If the action of this board is to defer, approve or deny, we would recommend you hear testimony from anyone that wants to give testimony.

**G. SHERMAN** asked if we can decide that after we hear the testimony.

**SCHLEGEL** answered correct.

**MCKAY** asked if we go through that process, does that mean the next time, will it be an open hearing where they can also speak.

**SCHLEGEL** stated that is up to the Commission. What the chair just said a minute ago, you have the option of taking testimony today and closing the public hearing or taking testimony and leaving the public hearing open for any additional testimony that may be necessary at the next meeting.

**ALDRICH** stated my question has to do with the deferral, what kind of time span are you looking at, two weeks.

**LONGNECKER** stated that unless there is something drastic, I think two weeks should be sufficient time. I would also like to point out that a two week deferral in no way affects the date that this case is to go to City Council. We have a two week protest period that's going to end October 4<sup>th</sup>. Which means it would go to the October 23<sup>rd</sup> Council meeting, however, the October 23<sup>rd</sup> meeting is a consent item workshop day, and based on my experience with this case, it is highly doubtful this would go without protest. So that leaves November 6<sup>th</sup>, as the first City Council date available that's not a consent agenda day and if we deferred it to October 4<sup>th</sup>, the protest period would end October 18<sup>th</sup> and that would allow staff time to send it to Law on October 22<sup>nd</sup> and therefore City Council on November 6<sup>th</sup>. As far as final action by the governing body, we have the time to proceed to the governing body for final action on this.

**ALDRICH** stated that you made comment that there were some meetings held between the owners and the agent or applicant and that staff wasn't invited. Were there reasons behind that. Was it just to allow them to work things out.

**LONGNECKER** stated that yeah, it was an attempt to try and allow these issues to be worked out if they could. We have plenty of folks here to give their take on where we are at right now in regards to resolution.

**ALDRICH** asked if staff felt if there has been a significant amount of change that you would recommend that deferral take place based on the additional input.

**LONGNECKER** stated that there are still some issues that staff and the applicant haven't addressed. To be honest, I haven't had time to just sit and go over the last revision that we received last Thursday, after the mail-out to the MAPC, simply because I have other projects that I need to get on to and I needed to get this case mailed out to the MAPC.

**ALDRICH** stated he has a question for Mr. **SCHLEGEL**. If this body does decide to make a deferral on this till October 4<sup>th</sup>, what will that do for notifications, would that process have to be redone.

**SCHLEGEL** stated that no, if you defer it to a date certain, then that is notification to all those that are present that it has been deferred to that date then. We will not send out another letter of notification.

**G. SHERMAN** stated he has a few specific questions. In number D where you recommended that light pole be 15 feet tall within 200 feet of residential zoning, since that reserve will be residential, would that mean 200 feet from the reserve.

**LONGNECKER** stated no. We say in the staff report that the reserve would also act as a setback and that we would also put in language that would waive the compatibility setback standards. So the reserve acts as both the setback and reserve and we would note on the CUP that would waive compatibility setback standards.

**G. SHERMAN** asked how close to the property lines can a 27 foot light pole be.

**LONGNECKER** said it has to be more than 200 feet away from the property line.

**G. SHERMAN** asked, not 200 feet from that zoning because you waived the standards there.

**LONGNECKER** stated correct.

**G. SHERMAN** stated that I couldn't tell whether you thought the wrought iron fence and berm with trees are good or bad.

**LONGNECKER** stated he thinks it's a good idea. The applicant has a PowerPoint presentation where they will give you examples of what they propose to do. Just along 29<sup>th</sup> Street, between Maize Road and Tyler, you've got a berm that's planted with what looks like red cedars staggered every fifteen feet. I don't know how high the berm is but the way they have those cedars staggered, you could have effective solid screening year round and a tree like a red cedar could last through just about anything.

**G. SHERMAN** asked is there room to do that at the cropped corner where you've reduced the setback.

**LONGNECKER** we would have to see. They are asking for 35-foot, but they are going to have to provide the equivalent of what solid screening is. Again, landscaping is going to have to be reviewed, and if they want to meet the solid screen criteria with a berm and plantings, they are going to have to show us how it works.

**G. SHERMAN** stated that you are saying in the report they will provide 1.5 times the landscaping required by code, but they get to count the landscaping up on the north side of the site.

**LONGNECKER** stated the only portion of the landscaping that's on their property that we are going to count is the mixed tree hedge line along the north property line. Other than that, we do not have any other landscaping on their side, separating them from residential properties.

**G. SHERMAN** asked about General Provision H; about the predominant building material, does that apply to each wall of the building.

**LONGNECKER** stated that it would apply to all walls.

**G. SHERMAN** stated that he would read that to mean if it is predominant on the building and not on each wall.

**LONGNECKER** stated okay, I see what you are saying, for the walls.

**G. SHERMAN** stated for the walls of the building. Just reading that, it looks to me like they could make the whole back wall of the building metal panels if they wanted to as long as the others were block or predominately block.

**LONGNECKER** answered I'm not sure how to answer that.

**SCHLEGEL** stated that he didn't think that was Bill's intent.

**G. SHERMAN** stated me neither. I'm just going off what it is saying.

**SCHLEGEL** stated that your comment is well noted.

**G. SHERMAN** stated on item number N, it talks about screening of the loading areas being tall enough and long enough to screen the largest trucks and trailers unloading. Obviously trucks are taller than eight feet high, that does mean they will have to be higher than that or between the berm and trees when they plant them, be higher than a trailer truck.

**LONGNECKER** stated it's got to be higher than the trailer and truck. There are a couple ways to address that, if you are going to have a loading dock, you can have it at the same level and go up. Or you could have a recessed area into the loading area, which would reduce the height of the wall and hide to truck going down into it. At the DAB meeting they did show examples of a recessed loading area. So again, we are asking to see examples of it also.

**G. SHERMAN** stated he suspects there maybe more than one truck in the loading dock waiting even if they are not idling and there will be those storage boxes, I didn't see any provisions about that.

**LONGNECKER** stated the storage boxes, by code, have to be screened.

**G. SHERMAN** asked to their full height.

**LONGNECKER** stated yes.

**DENNIS** asked if there were any more questions. Seeing none, what I recommend is that we do hold the public hearing today and at the end of that you can decide if you want to defer action for a future date or not, but I do recommend a full public hearing because everyone is here today.

**KEVIN GASKEY, 1316 GARDEN GROVE COURT, PLANO, TX** stated that we have done a lot of work with staff and the homeowners, many of them I recognize here today. We had three different meetings with the homeowners over the last two weeks, had multiple phone calls and face to face meetings with staff. This afternoon what I wanted to do was to go over our presentation for the overall project. A lot of the questions that some of you have asked, I think we can answer them today. Bill showed you originally the CUP plan that we originally submitted, which this represents the original CUP Plan (referring to a drawing shown on the screen). In conversations with staff, with the homeowners and the HOA, we have made some modifications to that plan and I will walk through those modifications with you. Looking at your staff report that you have in front of you, I think the only two items that we have outstanding with you right now are A and K, and we will touch on those with you. I

think the rest of the items we are in agreement with. So on A and K we still have to have some discussion on. The first item I want to touch on is the item to the north. We originally submitted a 30-foot setback, then we increased it to 70 feet and that was based on conversations we had with homeowners and staff based on maintaining those existing trees. To the east, we originally started with a 30-foot setback, reserve if you will, and we increased it to 60 feet to meet the existing 60-foot setback the HOA has to the east. To the south we originally had a zero-foot reserve in this area and, based on conversations, we increased it to 35-foot. To the north we have a 30-foot reserve that we increased to 35 feet to meet the setback requirement. The light poles were reduced from 40 feet to 27 feet. The sign heights were reduced from 24 feet to 22 feet and 40 to 35 feet, respectively. Landscaping, just one point of clarification, we are proposing to increase the landscaping in the reserves by 1.5 times quantity and size. The remainder of the site would be per code. So in the reserve areas the landscaping would be 1.5 times code; the remainder of the site would be per city code. Mr. LONGNECKER mentioned the addition of the wrought iron fence. That is a discussion we had with the homeowners and for security reasons they would like to have a six-foot wrought iron fence. We have that located from 29<sup>th</sup> Street all the way up to the masonry wall. We also added three-foot berms to match the overall character of the Fox Ridge neighborhood with their berms. And then lastly, we added language to the CUP about screening the roof-top units on the eastern elevation.

**GASKEY** describes the site plan, building elevations, landscape plan and signage.

**DENNIS** stated that your time is up, do you need more time.

**GASKEY** stated at least a half minute.

**MOTION:** To approve one additional minute of presentation time.

**ALDRICH** moved, **DENNIS** seconded the motion, approved by a vote of (14-0)

**GASKEY** stated that one of the questions that have come up is traffic. We have put together a small diagram related to what a Sam's Clubs generates in terms of traffic related to a grocery use or a strip center use and per the 2008 ITE trip generation manual. If we were to take a 60,000 square-foot grocery store plus 70,000-foot of retail and put it on the site, it would generate approximately 11,900 TPM trips per hour coming out of the site. Based on a 138,000 square-foot Sam's Club on our site, we would be generating approximately 585 trips per hour, which is almost half of what a grocery anchored center and a retail center would generate with the same square footage. That's assuming that the remainder of the site, the out lots and what's happening up on Tract Seven, remains the same. Thank you and I will stand for any questions you may have.

**ALDRICH** stated that I don't know for sure or not if you are in a position to answer this, but do you have an approximate number of employees that would be employed at this facility.

**GASKEY** stated approximately 150. I can get more specific. Is that correct Ryan?

**ALDRICH** asked if that is during normal business hours. Would there be an increase during the holidays or would employment pretty much stay the same.

**RYAN IRSIK, PUBLIC AFFAIRS, WALMART, 3902 SW. RIDGEWAY STREET, BENTONVILLE, ARKANSAS**, stated approximately 150 associates with this Sam's Club; however, it would mirror other Sam's Club's in the area and they trend from 150 to 200. There is not a mandatory number they do. They go in and out.

**ALDRICH** asked do you also see that other types of businesses will pop up, if you will; would you think the same thing would occur at this location if this was approved.

**IRSIK** stated yes, the Sam's Club and Wal-Mart and other developments they do tend to be an anchor for other development.

**ALDRICH** asked if it would have additional employees working at those sites, correct.

**IRSIK** stated absolutely.

**G. SHERMAN** stated he had one question in regards to employees, you say 150 associates, that's total, not any one shift, right?

**IRSIK** stated correct, total.

**G. SHERMAN** stated he wanted to clarify the one with the fence. You are not proposing one for the north there, are you just using the trees for that?

**GASKEY** stated no sir. Let me clarify. What we are proposing is a wrought iron fence along the area that is inside our property, on our side of the berm, if you will, coming across to the north and then it would continue to the north and then tie in to the existing six-foot wall that's behind the existing homes here.

**G. SHERMAN** stated when you were speaking you talked about pylon signs and then you showed pictures of pole signs, which is it you are proposing there.

**GASKEY** stated we would propose the signs as shown, as a pole type signs.

**SHEETS** stated that this is a membership club correct. It should be clear on the hours of operation, correct.

**IRSIK** stated that this club will mirror the same hours you see throughout the Wichita area. These aren't completely set, but small businesses will have the opportunity at 7:00 a.m., Monday through Friday, and 7:00 a.m. on Saturday. Those hours last from 7:00 to 10:00 am; they come in and shop exclusively. Other members that aren't small businesses can come in on Monday through Friday from 10:00 a.m. to 8:30 p.m. and Saturday from 9:00 a.m. to 8:30 p.m. and Sunday 10:00 am to 6:00 p.m. The latest the club would be open on any given day would be 8:30 p.m., Monday through Friday.

**G. SHERMAN** stated I think when you started you said A and K were points you disagreed with staff on, unless I fell asleep, I don't think you addressed K.

**GASKEY** stated K was one that based on conversations with staff and homeowners. I don't want to speak for the homeowners, but we supported the six-foot wrought iron wall because they were

concerned with somebody parking over here at the club, and there are a lot of other cars here, walking through the neighborhood and being able to break into a home and then walking back. So we propose a six-foot wrought iron fence without a gate to discourage that. If the homeowners were to speak differently to that we can talk through that. On A, I think the only two issues we were concerned about is we've gone from a 30-foot setback on the north where this existing tree buffer is to seventy feet and we agreed with staff on the 90 feet. We understand Mr. LONGNECKER is looking for 120 feet to mirror what is on the east, but to the east we have 60 feet on our property and 60 feet on their property.

**FARNEY** asked do you know where you are going to put the trash containers.

**GASKEY** stated yes. There will be a compactor in a location where a screening wall will come around in the location of the compactor. The screening will take care of the compactor.

**FARNEY** asked if they will require a daily pickup.

**GASKEY** said that would be an operations question, Ryan?

**IRSIK** stated yes.

**FOSTER** stated he has a couple questions about the dry detention. Sometimes those are not very sightly, what is your intended landscaping down within the detention.

**GASKEY** stated what we are proposing on the plan, since these are at our front door, is that these will be natural grasses down in there. We wanted to keep them natural. We didn't want them to be retention ponds where they hold water. We wanted them to be basically a dry storage area so in the event of a rain storm that exceeds the capacity that our outfalls have, that drainage would be stored here and probably be released within 24 hours. It would be a natural grass similar to what we will be planting on the berm.

**FOSTER** asked about using detention as additional buffering, was that looked at on that east side there.

**GASKEY** stated we have looked at drainage for the overall site and the natural grade of the site. There are basically three outfall sites on the whole site and there are discharge points on the south part of the site. As we looked at the site plan it was determined that we wanted to bring the drainage as far south as we could, and send a portion of the drainage to the east, but it won't exceed what's allowable by code. The remaining water will be detained and metered out to the south and southeast. To answer your question, we didn't look at potential detention area back there because it would continue to push the building further west.

**G. SHERMAN** stated my experience with Wal-Mart and Sam's has been the upfront people, the designers, the planners are pretty cooperative, and then the operations people ignore all the promises that were made or even don't know what they were. Could somebody get a phone number for the homeowners to call if the trash truck shows up at five in the morning or trucks are idling all night back there?

**IRSIK** stated with all of our stores we have a chain of command and the neighbors or customers can complain directly to the manager about issues. As you mentioned it, Wal-Mart and Sam's Club, based

on our sustainability agenda and also based on trying to be a good neighbor, we have a zero idle policy for all of our semis.

**SARAH LAUFFER, 9901 W. WESTLAKES CT.**, stated that we the residents of Fox Ridge strongly oppose changing the zoning under review for the reasons that will be presented on the following slides by residents and concerned citizens. My husband and I built our custom home in 2008. This was our third home and we felt like we got everything right this time. The development choice was easy. We were impressed with Fox Ridge. It is a great place to raise our two sons who walk to and from Maize South every day. When I first learned that Sam's may develop the land our home backs up to, I was stunned. We knew the land might not always be farmland, and believed that it might be developed as an extension of Fox Ridge. At most it would be a light or local commercial that would complement Fox Ridge, and even that would require zoning changes and approvals. I believe the change such as the one they are requesting would not be allowed because our local government would want to preserve the city's unique and distinctive neighborhoods on the basis that approving one development, one who could clearly have their pick of more appropriate sites, at the expense of another when they have their largest single investment at stake, their homes is not in Wichita's best interest. To find out how our community felt about the proposed change we began a petition. The petition that we gave to you today requested that the zoning change be denied and that instead any zoning change to local commercial as per the definitions for the 2030 Functional Land Use Plan. Many volunteers, including myself, canvassed Fox Ridge and the surrounding neighborhoods. Many concerned citizens searched us out for an opportunity to make sure they could sign the petition. The result was overwhelmingly apparent that we oppose the change as less than three percent declined to sign the petition with some of those simply saying they couldn't sign it. The petition was submitted on August 31<sup>st</sup> to the Planning office and it currently has 281 signatures representing 419 concerned citizens. In the short time since we learned of the zoning change, the Fox Ridge residents have held two community meetings, each of which had approximately 100 people in attendance. We also had a strong showing of support of approximately 70 residents who attended the DAB meeting on September 10<sup>th</sup>. The other speakers and I want it known that, although not everyone is able to attend this meeting, their signatures and their attendance at the other meetings represents their strong rejection of the zoning change application. On a personal note, last night as I lay awake I was pleased to hear the owls outside my window, and I thought about what a great job Mr. Schellenberg had done giving a small town country feel to Fox Ridge. I hope you don't allow that to be sacrificed by over development.

**ALDRICH** asked if you were aware of any of the other development going on along Maize when you bought the property.

**LAUFFER** stated yes we were. We didn't believe they would be giving their farm to someone else, but when we discussed that with the developer and real estate agent, I think based on what that land use plan said, he assured us that it would someday be part of Fox Ridge. It would continue on when they were ready to give up that farmland. Hopefully it would be a light or local commercial, which I understand it to be now, so it would tie into Fox Ridge.

**ALDRICH** asked if she knew what Fox Ridge was before it was developed.

**LAUFFER** stated farmland.

**G. SHERMAN** stated that you mentioned a couple of neighborhood meetings, were those meeting that Sam's was at, and did you participate at those meetings.

**LAUFFER** stated that the two neighborhood meetings were at the Sedgwick County Extension Office, and that Mr. Longwell and Mr. **LONGNECKER** came to those as well as some other Commissioners. It was an open public forum. Sam's was not communicating at that time, so they were not involved.

**G. SHERMAN** asked have you spoken with the Sam's people since.

**LAUFFER** stated we had one meeting with them that I was involved in because my property does back up to loading dock.

**ANDY JONES, 9905 W. WESTLAKES COURT**, stated he wanted to comment on the extensive meetings. There have not been extensive meetings between the applicant and the homeowners. It's been very minimal and what we see changed has been even less minimal. It's very little that they have actually listened to us at all. In terms of the 2030 Comprehensive Plan, we looked at this before we bought our home and it said local commercial and its definition says concentrations of predominately commercial, office and personal services that do not have significant regional draw. For example grocery stores, florists, restaurants. It can be comparable to the Unified Zoning Code's Neighborhood Retail. And that, again, is local commercial, urban development mix of Wichita-Sedgwick County. It does not include regional commercial which encompasses major destination areas that have predominately regional market areas and high volumes of retail traffic and includes things like big box retail stores of which Sam's is one. The staff report, as we read it, implies that the local commercial and regional commercial are pretty equivalent. Now I believe as you read this, that is not the case, local commercial is not equivalent to regional commercial development. As we understand the process to be, for the Comprehensive Plan, the MAPC is required to meet annually to review the Comprehensive Plan. If the MAPC determines that the plan needs to be amended, then the MAPC has to hold a public hearing and have to have a public notice published about that hearing on what they are going to do, as in adopting changes to the CUP. If they vote in favor of the amendment, it has to go to the Wichita City Council and Sedgwick County Board of County Commissioners for approval. Now the fact that the MAPC has annually looked at the Comprehensive Plan and has never saw fit to sponsor an amendment seems to those who have bought into that development over the last four or five years a bit odd to say the least. And, if it was a natural progression as we keep being told, why was the CUP never revised or updated after all those opportunities over the last four or five years. Why were we misled to believe that local commercial was what it is suppose to be when if you intended to change it, why didn't you. Again, the Comprehensive Plan, as I understand it, is a required procedure for amending the CUP. If the planning authorities determine a change in the CUP is appropriate, the process must be followed. Using private parties' rezoning applications as a way of amending the CUP undermines the process and all the due deliberations that the public went through as an entire community come in to play when amending the original proposal. In a sense if you reverse the process, rather than creating harmonious development, which is what it is suppose to be, but first determining a change in the CUP is appropriate makes it a rezoning change first and then you go back and change the CUP to justify your actions. Ignoring the CUP guidance of the range of proper uses in a particular location and rezoned to something else comes close to spot zoning and leads to an ad hoc piecemeal development which I thought was the point of the Comprehensive Plan to avoid those kind of issues. Reading the report, it seems there is an apparent fudging of what local commercial and neighborhood retail is so as to undermine the legal and public role of the process. The staff report wants to look at attributes of the site, size, location, etc., saying it aligns with regional commercial and then trying to interpret their way around the legal limitations of the local commercial designation. In summary, the CUP is zoned local commercial, a big

box store is not available to this type of land use and if there is a change that is required, the CUP amendment process must be followed.

**NATHAN LAGER, 10315 W. WESTLAKES COURT**, stated he has concerns regarding the traffic specifically. There has been no discussion about traffic with the applicants. I believe they stated that they were not required to do so at the time. I would suggest that would need to be considered, not just in terms of the Sam's Club, but the overall site development. There are five other parcels on this lot as well as Parcel 7 on the northern part of the map and that will create additional traffic. With this additional traffic there are safety concerns within the neighborhood. There is a school in the neighborhood with 2,100 students with grades 2 through 12, and there are impacts in respect with what we had in mind with the neighborhood. We suggest that zoning be denied until an appropriate traffic study is done. In terms of the burden of traffic, Sam's Club has indicated that there would be 500 trips a day just with their store and they haven't considered the rest of the development. The 2035 traffic model suggests that 29<sup>th</sup> and Maize intersection has 18 to 19,000 trips per day. Just adding the Sam's Club alone to the current traffic of 10 to 12,000 trips per day puts it at that maximum without consideration of other development. The Institute of Transportation Engineers suggests that any development that has over 750 trips per day should look at a traffic study. Again, this is not just Sam's Club. There are multiple businesses, the gas station at the corner; there's parcel 7 and there are delivery trucks. We have had a recent experience at 21<sup>st</sup> and Maize where that intersection had to be completely redone with the traffic versus when it was first developed. I would not want to see that same experience happen here where no traffic is considered pre-zoning change then have to redo it sometime later. To compare some uniqueness to this site versus the other Sam's Club sites in the area, the other Sam's Clubs are located near major traffic highways, there are no schools around them and there are no neighborhood roads for traffic to pass through. The Sam's Clubs here are on Kellogg and on Rock Road. Our development here is much different than these Sam's Clubs from a traffic standpoint. Moving on to the safety concerns in terms of increased traffic, there is a cut through road through our neighborhood that is specifically designed to have a calming system to slow down traffic. There are blind spots through this neighborhood. There are students who walk to school just north of the neighborhood and we have had nonresident accidents in the neighborhood because they are unfamiliar with the road and the pass through street. I want to highlight specifically what the applicant has suggested for the entrances and exits from the store on to Maize since that is the closest proximity street to the development. Today, I am a resident of Fox Ridge and it is very difficult to make a left-hand turn on to Maize Road, going out of the neighborhood. So there is a thought that the traffic would flow north, and Sam's Club have said they expect the traffic flow to come from the south, so the traffic will want to head back south. The only way to get out of the store without a traffic study to understand lighting signals and how to manage the flow of that traffic is to go north. When they go north they can cut through our neighborhood and they can cut through the street that goes right by the school to get them back south if they don't want to wait to make a left hand turn.

**MOTION:** To approve two additional minutes of presentation time.

**SHEETS** moved, **FOSTER** seconded the motion, approved by a vote of (14-0)

**LAGER** stated the biggest concern here is that there has been no discussion about what the traffic impact is other than what's specific with the Sam's store; what that traffic looks like in terms of the total site development, not just the Sam's Club itself. This has been discussed before as a regional draw. You are talking about traffic coming from all different areas from out-of-town to this store. In conclusion, there is inadequate information at this point of the game to understand the impact to traffic.

There are significant concerns, kids and a major school system in close proximity of this development where they will be walking. From a neighborhood standpoint, there are a lot of walkers and cyclists. Nonresidents that are not familiar would take an easy cut-through the neighborhood. We have already had accidents with those nonresidents not adhering to the speed zones or contemplating the blind spots through that neighborhood.

**ALDRICH** stated if he would be opposed to other uses, like a recycling collection station, asphalt/concrete plant, church or government service on that property.

**LAGER** stated I would not be opposed to a church or an office building, a one story office building. I would have concerns on the other development, the cleanliness of it and how it looks in relation to the rest of the development.

**ALDRICH** stated the reason why I say that is because those services, if you will, would be allowed there now.

**LAGER** stated that I am learning through this process on what's allowed.

**KLAUSMEYER** asked if you have problems with school traffic coming through the neighborhood.

**LAGER** stated that he doesn't experience that today.

**DAVID PIPER, 9917 W. WESTLAKES COURT**, stated that he believes a drainage study is needed for this area. I have lived on the west side of Wichita for 42 years and my biggest concern during that time has been the drainage. I've seen numerous occasions when the Westlink drainage canal receives all the water from upstream, and Fox Ridge is the headwaters for that. There was a catastrophic event that happened in 2008, the twelve and a half inches at the airport to twenty inches in other locations that occurred on September 8<sup>th</sup> of that year. Fox Ridge area was inundated with water. 29<sup>th</sup> Street and all of the downstream areas were flooded. There has been some mitigation to that since then, but I believe it is not capable of handling another twelve inch rain. The natural flow of the property is from the north towards the south. That water feeds Fox Ridge Lake or a portion of it and it helps keep those lakes at a natural level and the health of those lakes. The rest of that water is planned to be drained to the south to those detention ponds. For a twelve inch rain, I don't believe there is a retention pond they can build on this site and still build all the buildings that can retain that water. If you look downstream, you can see the Cadillac Lake area has a 30-acre detention pond, and it's designed to retain the water and then slowly drain it south downstream into the Westlink drainage ditch. A twelve inch rain would fill that and overflow it. Fox Ridge needs some of that water off of that property to keep the lakes healthy and the developer originally designed that to have that flow. I would like you to think of an asphalt property with contaminants and oils draining into our lakes. I don't think that is good either. If you reduce that flow or eliminate, that's not good. We thought about drainage areas and ponds adjacent to our property to handle that, but I don't believe the developer of Sam' was willing to do that. Isn't it the responsibility of the local government to do a well thought out and careful planned change so neighborhoods are not drastically affected so if we have a rain like this again...I think it is prudent judgment that decisions made that affect Fox Ridge before this occurs. Ignoring this issue is going to be hazardous to us and our residences. That makes rezoning of this property really susceptible to speculative information at this point.

**MOTION:** To approve one additional minute of presentation time.

**SHEETS** moved, **FOSTER** seconded the motion, approved by a vote of (14-0)

**PIPER** stated that we feel that you should defer this, deny this rezoning until the developer of the Sam's property comes up with a better alternative. Basically we think that the data to support this change is insufficient at this time and the decision that you are trying to make is very difficult considering this limited data.

**THOMAS LUTHER, 10128 W. WESTLAKES COURT**, stated he would like to address the subject of property values and advocate for a cautious approach going forward. One of the functions of government is to protect personal property rights. A part of this is to ensure predictable circumstances for our real estate investments as far as it is reasonable and possible to do so. That is in fact one of the reasons we do land use planning. As you can see from the handout the residential component of the adjacent real estate has a collective value in the range of \$150 million. This represents the dreams and aspirations of over 300 families that are unaware that their property values may be compromised by zoning changes on property that literally touches their backyards. Please consider that these hundreds of families were there first. In fact, had the sellers had wanted they could have made their current holdings a part of a larger planning process when Fox Ridge community was created. Would it not be in the best interest of all parties to succeed with proper planning and impact assessments before making any decision regarding this development? Why unnecessarily risk so many people's investment of \$150 million for the possible rewards that might be realized from an overly quick decision to green light this project. It is our position that any changes to existing zoning plans balance the interest of adjacent property owners with the benefits of a reasonable development of this land. We feel it is fair and just to conclude any changes to the zoning at this late date be viewed as an afterthought regarding the residual property that for whatever reason was not made a part of the original land use plan.

**JIM MORGAN, 9913 W. WESTLAKES COURT**, stated he wanted to talk about noise pollution. When we look at the city code ordinance 47-030, you see that in residential it is between 8:00 a.m. and 10:00 p.m. is 55 decibels and between 10:00 p.m. and 8:00 a.m. it is 50 decibels. When we look at adjacent zones, when a noise source can be heard from another zone, the zone with the more restrictive level shall be used. (Showing Slides) Sound levels, depending on distance; every time you double the distance from a sound source the sound level decreases by 6 decibels. A heavy truck at ten miles per hour, for example driving to the docks the way that Sam's has it set up right now, they would drive along the north side and turn the corner behind my house and my neighbors houses and then drive into the docks. That's how I understand it. At 60 feet, the proposed distance of Parcel 1 to SF-5 zoning, not from my property line, but from where single-family 5 zoning is, is still 67.4 decibels, which is still over the maximum they can have in a residential zone. You would have to go out over 400 feet to be in compliance with the noise ordinance during the day and all the way out to 800 feet to be in compliance during the night. A garbage truck is 100 decibels at 25 feet. Even at 1,600 feet the decibel level does not drop enough to meet the City of Wichita Noise Ordinance. A study done by the Federal Highway Administration about using vegetation for noise abatement basically says vegetation is not considered noise abatement, especially when involving federally funded projects. Vegetation must be a minimum of 100 feet thick, a minimum of 20 feet high and sufficiently dense so that it cannot be seen through in order to provide a 5 decibel drop in noise. So the proposal that we have gotten does not even come close to that. There is a very high standard of landscaping our development has. We spend as a HOA between 80 and 100,000 dollars a year to maintain the landscaping. We take much pride in the development and we put our money where our mouth is. We have trees and native landscaping and, in my opinion, this is one of the best developed and nicest neighborhoods in Wichita. Trucks delivering at

all hours...we requested a restriction of 7:00 a.m.-7:00 p.m., and we were told that that is not possible. We requested moving the loading docks away from residential area to reduce noise. We were told that was not an option. I have nine windows facing the farm land right now. I look out at about 12 feet off the ground, not ground level. Shielding it from ground level is inadequate. There will be 27-foot light poles affecting the houses to the north and trucks driving towards my house shining headlights into my kitchen, living room and bedroom at all hours of the night. The reason this is so important for this area is for the kids. Its quality of life we are talking about here. If we let a big box store back up to every nice neighborhood in the entire City of Wichita, we are just going to lose out on people wanting to live here.

**ALDRICH** asked if he knew how many trash trucks would you think would be going to Sam's. I guess their delivery and pickup would probably be once a day.

**MORGAN** said he would assume at least one trash truck per day.

**ALDRICH** asked how many trash companies service Fox Ridge.

**MORGAN** answered one. It is in our covenants that we have one trash company so we have one trash pickup day per week. We don't have multiples coming in at all hours on all days.

**ALDRICH** asked if your service provider only picks up on one day.

**MORGAN** answered yes.

**MIKE BEAVERS, 9921 W. WESTLAKES COURT** stated that they have a new neighbor and they want to build here. They don't care that much about us because we met with them and had conversations with them. When they build, they don't want to be held accountable to the same standards as our neighborhood. Based on the plan that I just saw today, I am shocked part of the land behind my house won't even get any trees until they sell the property. So I'm going to have a great view of Sam's over the trees that are left behind. Our neighbors want to build a huge building with a tall façade as close to the property as possible. They want to erect the lights that shine in our homes, and have a huge parking lot with constant traffic. For every item that goes into the store, tons of garbage comes out. Can you picture the dumpsters overflowing with smelly and nasty trash? I can because that is what I am going to see. Our home overlooks what's known as Rink's farm today and we have one of the most beautiful sunsets in Kansas. We recently learned a developer from Dallas representing Sam's Club will be our new neighbor. If this happens, we along with hundreds of neighbors will be faced with the negatives associated with a development like this, including trash that blows in the strong Kansas winds, increased crime and devaluation of our property. Where will the wildlife go? We will never see the hawks, pheasants, deer, fox and other animals that made our neighborhood such a charming place. They are going to be replaced with overflowing dumpsters with rotten fruit, vegetables, spoiled meat and other byproducts of a place like this. The facts tell us that Sam's and its parent company, Wal-Mart, have a history of getting what they want and then leaving a mess for the rest of us to take care of. Now is not the time for this development and this is not the place. As a business, Sam's primary goal is to deliver a profit to their shareholders. And as a business, Sam's tries to develop its properties as economical as possible so it has less investment and overhead so it can deliver a higher profit. At one of our recent meetings when asked why they have not included particular features that protected the community, they said it was because our city didn't require it. As a homeowner like many of my neighbors, we have suffered through a terrible recession. I am just trying to stand up for my family and

our values. As a government body, you are our last line of defense. You can easily just stamp it approved and go on to next business; however, I ask you to make Sam's a responsible part of our community. If they truly want to develop here, ask them to go above and beyond the minimum. Insist on a plan that not only represents the concerns of our community, but to protect the city's communities well into the future. Please consider the effects this will have on our neighborhood and the neighborhood's surrounding it. Just remember if it gets approved, the nice folks from Sam's and the developers from Dallas will take their money and go back home and leave us to deal with the unsightly mess. As for the community, I can drive ten minutes to Sam's if I need to. It's not an inconvenience to me.

**DEBBIE HAND, 3217 N. DEN HOLLOW STREET**, stated that as you have heard from my neighbors, we do not believe the site chosen by Sam's represents the best placement of a new club. You have heard our concerns about the perceived lack of consideration for our safety, potential drainage issues, and increased traffic in and around our neighborhood, our home values and the aesthetics that exists in Fox Ridge today. We also feel that this location does not mirror the more regional locations here in Wichita where the club's have not been placed in close proximity to residential neighborhoods. In good Midwestern fashion, however, we felt strongly that when someone complains about a situation you need to step up to the plate and offer an alternative and be part of the solution. As a good neighbor and a citizen that supports commercial growth here in Wichita, we would like to offer two alternative locations. (Slides were shown showing other possible locations in Northwest Wichita for the Sam's Club. One location is to the north, south of the existing Menard's and a second location is the northwest corner of 37<sup>th</sup> Street North and North Ridge Road.) Being a good neighbor and corporate citizen is highly valued and expected here in Wichita. Good neighbors compromise to achieve a win/win outcome. Good neighbors are when two competing middle schools come together and provide an opportunity for a disadvantaged youth to score the last touchdown. Good neighbors drive slowly through a neighborhood that has both deaf and disabled children who enjoy being outside and active. Good neighbors care about each other. We expect nothing less of our corporate neighbors.

**SCOTT BENDER, FOX RIDGE HOMEOWNERS ASSOCIATION PRESIDENT, 3109 N. RED FOX STREET** stated they just received a letter from Doug Powers, the superintendent of the Maize School District, and he wanted to enter it into the record. It states that they have not had a chance to even look at this. They were not made aware of it until I contacted them about it this week in regards to some issues. First, I want to answer some questions asked earlier. Who are people going to call when Sam's doesn't meet the requirements, it will be me. I get lots of feedback from the neighborhood. I am the one who is going to get that call. I want to point out that my rule as Fox Ridge president is to make sure we have good neighbors and I do that by way of the considerations of those who are present and those who join us. I make sure the weight of the many outweigh the individual. I concern myself with the fact I am here to protect the people largest and second largest single investments on properties ranging from \$250,000 and \$800,000. The way we do that is we require very high architectural standards. We vary the designs and do lots of things to make sure our neighborhood is nice. There is strong covenant enforcement, which is a big chunk of what I do. I make sure people toe the line and hold on to what is valuable to the neighborhood. We are not a neighborhood of 1.5 standard, we raise the bar much higher. Obviously the purpose of the CUP is to make standards that are not minimal. It is not a document of minimum standards, but yet it's like covenants in our planned community. We are here to make sure people follow the rules. We've had little interaction with the applicant. They said we had three meetings, DAB, board meeting, and another meeting from parties that live on the two streets in the neighborhood. We requested fifteen specific fundamental items. Some of these have been addressed already and talked about, but we have seen very few of those come out in the new CUP.

Basically, if you are going to give us a new neighbor, what the Fox Ridge board is here to do is to ask that you provide very strong covenants for that neighbor. We have handed you a letter outlining those requirements. At this point, there is nothing Fox Ridge can do. We are stuck; we can't force other property owners to give up their property to build bigger berms. All of the impact and the issues that come up have to be dealt with on the applicant's side. Specifically, we need to talk about use restrictions. I want to make sure that uses currently allowed by right, which are detailed in the letter, that we restrict certain ones. One of them is multi-family. We don't want Section 8 housing popping up next to us. That's not being rude or elitist. I mean we've got very nice homes and we want to make sure we keep that and we don't want third part apartments looking over into our homes. We are not saying that long term these items can't exist. We just want to have a chance to comment when that happens. It is no different if somebody wanted to build a new house in our neighborhood, change the paint, change the look and add a new pool. We get a chance to comment on those things. If you allowed the CUP as planned, we never get another shot at this. We never get another chance to comment. We want to make sure we protect ourselves against surprises later on. I will agree with Sam's on one thing, we don't want any pedestrian access. If this is going to be limited commercial, let's be honest, I'm not going to carry the four tires that I buy from Sam's Club on my bike and ride through the neighborhood to get them home. I would get them on my golf cart, but not on my bike and we have covenants against riding my golf cart on the sidewalks. I'll hand it over to Greg Allison.

**ALDRICH** stated that he made notation that they have had very little interaction with the applicant, how many times have you or any other representative from Fox Ridge met with the applicant or agent.

**BENDER** stated two board members met with them once. The local neighbors and two board members met with them another time and then we were all present at the DAB.

**ALDRICH** stated that you have had three meetings with them so far.

**BENDER** stated that if you call the DAB a meeting, a conversational work, talk-it-out kind of meeting, yes, but I don't consider that a work, talk-it-out meeting. We found out about this from surveyors standing in one of the resident's backyard with a survey stake.

**ALDRICH** asked do you think it would be beneficial, pure question, if you or any representatives from Fox Ridge would set down with the agent and applicant to see what some of these issues if you could work it out.

**BENDER** stated that we gave them that list. We talked about it and we outlined it and prioritized it.

**ALDRICH** said he wasn't talking about a list, about having a face-to-face set down meeting.

**BENDER** stated that if Sam's wants to show up with decision makers we would be willing to talk. As part of the problem, I am told when we met earlier was that the decision makers weren't present. The Fox Ridge board would consider that option and we would be willing to talk to do what we can to protect our neighbors.

**MILLER STEVENS** stated that you have identified fifteen requests included in the CUP, and then you had your letter that had ten items. Do these ten items include the fifteen and if so, have the other five been resolved. Where is that comprehensive list?

**BENDER** answered that all fifteen items that we raised that evening are included in our requirements here. The fifteen items that we presented, what we called, were bare bones. They were kind of watered down a little bit based on feedback, based on the applicant's agents. This is our complete list. It not only includes those fifteen, but additional items if you look in the sub-points.

**GREG ALLISON, 3302 DEN HOLLOW**, stated that he has been asked to consult with the HOA board. As you know I am experienced in land development and entitlement issues in Wichita, experienced in engineering design on multiple projects and specifically around this area. In fact, I was the lead engineer on the Fox Ridge development, for the developer Marv Schellenberg, for the Fox Ridge Plaza zoning CUP that was approved late last year, the Stonebridge CUP that included the Menard's and the Hampton Square which is at 37<sup>th</sup> Street and Maize as well as Watercrest in the City of Maize. I come before you as an experienced person in this role just asking you for your consideration on the several points that have been brought up; to be able to reach reconciliation on some requested restrictions. Drainage is an item I know for sure that we need to review. As an example, when we brought before you the Fox Ridge Plaza just north of here, and lies within the same drainage basin, we provided a detailed concept report along with the CUP on our own request because we knew the importance of the plan. We had also provided a very detailed and comprehensive report for the northwest YMCA, because it was such a concern to those neighbors at that time that resolved and solved drainage problems, that we provided a detailed report. In fact from that detailed report, the YMCA reduced their size of development, particularly in commercial development. The reason I think it is important for this to be done is because the drainage plan affects the site plan with so much detail that if there are changes to site plan from what we have seen today, I believe the landowners or developers could lose additional credibility with the neighborhood. As far as a traffic study, I believe a traffic study or at minimum an outlining of the plan for traffic so that some of the concerns raised by these citizens are important, and that includes resolving where traffic signals would exist and where access points exist. For example, on 29<sup>th</sup> Street where they have their access point, they plan to have one of the most major access points off of 29<sup>th</sup> Street, 400 feet away from the traffic signal at the intersection. Now you could look at 21<sup>st</sup> and Maize as an example in a similar intersection at a very busy retail area just closed off from full access movement into the Dillon's. I believe that access point would be too close to facilitate another signal. I also think in the traffic study they ought to supply information on traffic lanes and improvements they intend to build. Again I think this adds credibility to the process and I know from my standpoint, coming into a developed area these are items that we often address at the zoning level, regardless if it is required at platting. It is our opinion that they ought to supply reasonable solutions to loading docks, and berm heights and wall heights. Another example of that is during the Fox Ridge Plaza to the north, this is a plan we provided (referencing screen). It was simply a plan that looked over 1.5 times. We literally, on this plan, counted the trees and we've committed to a quantity of trees and a number of rows of trees and separation between the trees. That is all based on concerns of the neighborhood that the developer, at that time, along with use, met with neighbors to come to some resolution before we even got to this point. Providing cross-sections literally show how well it will screen and hides off the neighborhood. Some of the concern with screening when just the minimum is required (referencing slide).

**MOTION:** To approve two additional minutes of presentation time.

**G. SHERMAN** moved, **MITCHELL** seconded the motion, approved by a vote of (12-0)

**ALLISON** (Continued to reference slides showing landscape standards) I could give you many examples like this. I think in the letter spelling out what we feel are minimum requirements are

reasonable for a neighbor moving into a new neighborhood that effects several people such as wall heights, loading dock, materials being used, monument signs rather than pole signs, and material on the back of buildings. In conclusion, it is our opinion that to be able to co-habitat and to have some transitional areas, we believe the CUP should be strong enough to voice the concerns of the residents in Fox Ridge.

**ALDRICH** asked if they have met with the agent and/or applicant regarding your proposals.

**ALLISON** stated yes.

**ALDRICH** stated at this point here all we are looking at is strictly whether or not what we have is appropriate for a zone change. We are not here platting. In fact, all this stuff will be addressed at that time, and this is strictly whether or not it is proper land use at this time.

**ALLISON** stated that is correct and I do realize at planning, if you leave it off the platting time, there are issues within the site plan that can severely affect all these items, particularly drainage. Because I heard the drainage concept that they have and I really, having been the designer of the neighborhood, I really am concerned they got the mark on their solution. Because I feel like if they want it to happen the way they want, they need more land area to detain the volume of water. What they really need to do is not increase runoff, whether it is to 29<sup>th</sup> Street, Maize or the Fox Ridge neighborhood, and, as I know, it's flat and things just tend to spread out to be able to be detained or pumped out. At this point, if they don't hit that right, the site plan changes and maybe gets more immediate concern from the neighbors.

**ALDRICH** stated that without an approved drainage plan, this doesn't move forward.

**ALLISON** stated no, but it does affect the site plan and if they adjust the site plan any different that would impinge on neighbors' rights.

**MITCHELL** asked as a professional in land development, what zoning would you recommend?

**ALLISON** stated as far as he understood, commercial would be a part of this corner. Typically, especially when commercial comes into a neighborhood, there is some transitional zoning rather than intensely light commercial or limited commercial throughout. This isn't about Sam's. This is about the whole CUP. They haven't addressed concerns on Parcel 7, the north parcel, without even having a site plan. I would recommend...they are going to have the opportunity if it is an apartment complex or a big box to come back to you and to the neighbors, credibly show what they would want to propose here. My thought is you reduce the commercial down to a certain size and provide some transitional zoning, whether office or something else that can cohabitate with the neighborhood. It's not unreasonable to think it would be commercial, in part, but not 40 acres.

**MITCHELL** in the past, have you discussed with the owners of the land being developed and with the neighbors of Fox Ridge what that zoning ought to be.

**ALLISON** stated that he has never discussed that with the owners of Fox Ridge or until last week we talked to the Wal-Mart representatives or the Sam's reps. We suggested transitional zoning to help mitigate between a more intense commercial towards the residential.

**MITCHELL** asked if he could define the transitional zoning a little better.

**ALLISON** stated the transitional zoning could be office, like if it was medical for example. An example of that can be seen down by Lowes. There's an office complex that transitions from the Lowe's CUP into the neighborhood. So it is not as intense commercial abutting homes. It could be multi-family to some sort, but generally speaking you would like to see the site plan to see what that looks like. It could be senior living, a church, and a school. High intensity limited commercial for right up to residential housing is of concern and would be the reason to transition that zoning.

**MARVIN SCHELLENBERG, 7409 LAKEWOOD CIRCLE**, stated he is the developer of Fox Ridge. Fox Ridge is a beautiful neighborhood, it is unique, and it is probably the biggest land makeover I have ever done. I had zero trees and it had ten feet of drop in the first 200 feet and then it was table-top flat. We have committed about a third of the property to nature preserves and lakes. We have selected native grasses, trees and shrubs. We have put in a tremendous amount of time and money into this project. So it is certainly unique and it is not something that, I am certainly not biased, but I think it's the most beautiful development in all of Wichita. The purpose of me being here today is just to ensure that this community gets protected. I am certainly very familiar with the 50 acres. I had always hopes to be able to buy that ground from Mr. Rink some day, but with my feasibility study, there is only so much; I knew what it would take to provide the proper buffering for this area and to develop it. The best use would be for an end user for the price they were asking. So I do know that you can develop this property with the proper buffering to make it compatible, and the key is compatibility. That's what all these homeowners are really looking for. I did the development just south of Menard's and we sat down with the homeowners; they are not opposed to a big box, they are opposed with not having enough buffering and standards and regulations to ensure the longevity of their investment. They are reasonable people. I am not here to say I am against it, I'm just saying we have to make sure we have ample buffering to save their investment. We talk of eight-foot berms. Our roads are six foot above existing grade, top of foundation is five feet above curb. You are talking about around ten feet above existing grade with an eight-foot berm. The eight-foot berm doesn't do a whole lot of good. The elevation of where the building will stand is already ten-foot above existing grade. So now we have about a 20-foot difference. There is a lot of detail that this planning committee needs to give attention to make sure this development isn't going to be hurt. A lot of people have said things like New Market Square, you should have been able to see the stuff coming down the line. We forget that New Market Square was platted in 1998. The commercial was first, and then came the residential. That developer had control of everything. He could put the necessary buffers and when he sold the residential properties, they knew what was happening there. It is not the same. You can't apply the same standards as you do to that for something coming into the neighborhood. Fox Ridge plat was filed on July of 2003. Nine years later we have a new neighbor. If you want to fit into the new neighborhood you have to fit to what else is around and this is a high end highly landscaped community. I just want to make for sure you know that this isn't just an ordinary plat. We just can't go with ordinary zoning regulations. We have to apply something better than that and I think you owe the homeowners that as a planning committee to put those regulations in there. The Lowes site was also another site where they say it is similar, but with the Lowes site, there is nothing to the east of it and north of it is the Cadillac Lake which will never be developed. I developed a small area just to the south of it and its zoned office and neighborhood commercial. It's a decent zoning. It's a down zoning as Greg referred to as a buffer between it. Menards, once again, the surroundings, you've got a school.

**MOTION:** To approve two additional minutes of presentation time.

**SHEETS** moved, **MITCHELL** seconded the motion, approved by a vote of (12-0)

**SCHELLENBERG** stated that Menard's, once again, is totally protected. There is no residential up against it. I have the development to the south of that. We met with the homeowners and got their approvals and stuff. So you can't just say you guys should have seen this coming. There are reasons on how all these things came about; they just don't happen overnight. As the developer of Fox Ridge, I am not here to say we can't do a commercial application, I think it's going to happen. What I am asking is that you can protect these homeowners of the landscaping and integrity of this development. At the end of the day, one of two things are going to happen, either the developer of this proposed site will have to designate more ground to provide bigger buffers or more ground to have a down zoning and will have to make less money on it, or the homeowners are going to have to carry that brunt; because if you don't give the ample buffer in there, their property values will drop. That's what I want you guys to consider when you are looking at this project, to protect the current and existing homeowners we have.

**ALDRICH** stated that as a developer, what would you recommend as a workable buffer to make this coexist with Fox Ridge.

**SCHELLENBERG** stated that he hadn't had an opportunity to look at their site to see elevations. There are a lot of things to take into place. There are two types. You could do a buffer as far as the berming. The berming we put around Fox Ridge, it ranges around 12 to 18 feet tall. Then we have dense trees planted, things that we have done to make that separation. Something that is significant like that to make sure they do not see the lights or buildings. It was quite enlightening with the noise, where green doesn't block it. There are issues you have to look at, with the elevation of the building, what's the elevation from the back of your deck, what elevation does that have to be. So that would be something. My plans, I had hoped (leaves podium to point at screen) to put in a patio home on the north side and assisted living on the east side of the property. It's all market driven, but those are some ideas you could do, or office, as a zoning buffer.

**ALDRICH** stated that also with your experience would you be willing, if it came down to it, to sit down with the agent, applicant and homeowners to see what issues can be worked out so this project could go forward.

**SCHELLENBERG** stated certainly.

**KREG GREENWOOD, 10520 W. 31<sup>st</sup> STREET NORTH**, stated if you recognize that, you will see that I live on the west side of Maize Road. So I think I am the only speaker who will represent Belle Park, about 36 homes I believe. We are an old school neighborhood that loves their neighborhood as much as Fox Ridge does. They are the new school neighborhood. My street is right across from that tree line along the north side of that property. When I first heard the announcement, I was approaching on 29<sup>th</sup> Street to the west of Maize Road. I heard it on the radio. I drive all over Wichita for work, in surrounding counties and have been doing that for 27 years. I grew up in Oklahoma City. I'm an Okie and I like to keep things simple. So my gut reaction was, this is not a normal Sam's location, it just isn't. When I have a gut reaction like that, I like to back it up. So what I am going to do is let Sam's provide my proof. One of the things I have learned from the public meetings I have been to is that Sam's is very focused on a national template for their store. They don't like to vary from it unless they are made to, forced to; asked to, or whatever the city requires. So I was wondering what is the template for a Sam' location and I think they will provide the proof. We are going to take a two minute tour, (proceeded to show slides of Sam's Clubs locations in various other cities). I now understand completely what Sam's template is. They have a store template for store design. They have a template

for store location. It's beyond my comprehension. I can't wrap my head around expanding and growing a regional draw.

**MOTION:** To approve one additional minute of presentation time.

**D. SHERMAN** moved, **FOSTER** seconded the motion, approved by a vote of (11-0)

**GREENWOOD** stated I think I know their template. I do not see a highway, where's the highway. Why would it be in Wichita's best interest to create a regional draw, that's what they say in the meetings, a regional draw store. It's a big warehouse, and a big warehouse and a regional draw belong on a highway. Sam's proved it, I didn't. So why would we do that to Wichita on a west side community and we already know the challenges of Maize Road and I have not even mentioned the school district. Richard LeMunyon, my neighbor two doors down, told me I could quote him, his largest concern from 29<sup>th</sup> to 37<sup>th</sup>, he says the roadway and right-of-way is all City of Wichita based on an agreement with the City of Maize, so that mile is the City of Wichita's. At a minimum for the safety of the citizens, the school issue with school buses, the massive traffic up and down back to school because of the uniqueness of that skinny funnel up to Maize, a fifth obligated center turn lane is being marked and currently being built in Maize.

**ALDRICH** stated that on your slides, that was pretty impressive. I have actually been to a lot of those locations, but one thing that those locations are lacking is they don't have a draw like we have over there at New Market Square.

**GREENWOOD** stated that they talk about a regional draw. Some of those places they are perfectly willing to drop them in places where there is nothing around because they know if they build it, they will come. People decide to go to Sam's because they are going to fill up their car. It's a destination location. Not all of them are next to a Wal-Mart or anything like that. It became obvious to me. Even some of the newest locations are not.

**JACK QUEEN, 3230 N. FLATCREEK**, stated that he didn't have any PowerPoint's like they do; I am just going to go by my notes here. Mr. **ALDRICH**, your question about meeting with Sam's Club, we did have a meeting with them. Mr. **GASKEY** was there and the guy in the back there, but yeah we met with those guys and Mr. **ALLISON** over here was maybe the smartest guy in the room and he was asking questions to Mr. **GASKEY** on a lot of these things that he brought up today. Finally Mr. **GASKEY** got tired of him and kind of jumped in his face a little bit and asked are you an engineer. **ALLISON** stated yes I am and I developed Fox Ridge. From that point forward, there was absolutely no more communication between Mr. **ALLISON** and Mr. **GASKEY**. He came and sat next to me and was whispering something into my ear and it came to the point where he stopped listening to me too. We talked about the recessed load dock. Yes that's recessed. It's recessed at the back of the trailer, not at the front where the tractor sits, so the 10-foot wall is not high enough to cover the exhaust coming out of the tractors, to eliminate the sound going into the neighborhood. A lot of the time we see the bull haulers, you know the big trucks with the big pipes coming up that bow out instead of going straight up, that's going to be a problem because that's one pipe pointing at her house, and they are loud. I know a lot of bull haulers, those guys like loud and proud. The louder they can be the better off and that's what we don't want. We need to make sure when you guys are look at this, considering this, you need to look at that depth, because they say it's recessed, but it's just recessed at the back, not at the front. They talk about the landscaping, you know doing the berms all the way around, but they don't want to landscape immediately and some people will be just looking at dirt. I am on the board. I am the landscape guy. I

deal with our landscaping contractor and I am known as the resident tree guy, but unfortunately in our neighborhood we have had some things that have kept us from planting as many trees as we would have liked to. Definitely the no pass, I agree with that and the corner berm (away from podium) they can see that from there, and that is why we need that a little bit thicker. When we visited Mr. **SCHELLENBEG** about his development to the north, we talked about putting part of our land together with part of his land and making a bigger berm. We brought that up to them, which was one of the things that Mr. **BENDER** mentioned in his paper. Yeah, we would like to see that happen. They could make a much bigger and taller berm, with more trees and more grass but they didn't come back and put that in the CUP. The work relation that we have with Mr. **SCHELLENBERG** when he was doing his property, we found out about it and asked for a meeting. He talked to the board and a few homeowners with ideas and we presented them and he was very easy to deal with. Partly because he developed the neighborhood, he wanted to maintain the value of our neighborhood. Zero idle policy for their semis, that is only for Wal-Mart and Sam's trucks. (Pointing out to the audience) Her parents run a trucking company all for Wal-Mart and Sam's and they will sit out in the parking lot and idle all night long. They are not held responsible to the codes that Wal-Mart has. And one thing, the picture of the sight line that Mr. **GASKEY** showed on the east side of the building, backing up to homes there. The elevations from my standpoint didn't look anywhere near close because the elevation differences are so that you can see over our berm as it is, and basically they showed the eaves just barely above the top of the berms and I don't think that is quite right.

**ALDRICH** stated one of his comments were if all parties were to sit down and try to work anything out, and the reason I keep saying that is because I asked that for a reason. We had a similar development a few years back at 53<sup>rd</sup> and Meridian and that affected the Harbor Isle area and the Moorings area. Those are also some high end residential neighborhoods and it took a while, but they were actually able to sit down and work things out and the project was built and it appears that everybody is coexisting. That's what my intent has been, is right now what we are looking at is this appropriate land use, zoning issue. A lot of these other issues will be addressed at the time of platting and stuff. My whole thought pattern is to get all parties involved together to work things out and I've seen it done before and I think the same thing could apply here.

**QUEEN** stated that he is right there with Scott and would love to do that, but if we do that we need to sit down with somebody who makes the decisions. I understand that he is the developer and he is the regional spokesman, but they both said at the beginning of the meeting that they are not the decision makers. We would love to sit down with them and visit with them. We have people in our neighborhood that are smart and respected in our neighborhood and respected in the businesses we do. We just want to visit with them and we can keep a cool head.

**ALDRICH** stated that his intent was to set the ground work with where that can occur.

**QUEEN** stated that he would like to see that happen.

**BRIAN WHILHITE, 3223 N. FLATCREEK**, stated my wife and I moved into that house a little over a year ago and we looked out our back deck and said that's a nice pond. Nobody can build behind us. This is a perfect location for us. We didn't take into consideration a big box store. We were familiar with the 2030 Comprehensive Plan and we thought something like a Bradley Fair or a smaller development would go in there. Something hasn't been addressed yet. Everyone keeps talking about, at these hard corners, 29<sup>th</sup> and Maize Street, I'm told these are hard corners, there is major development down south and there could be some more up north and this corner has to be developed because it is the

intersection of two arterial roads. There are numerous intersections in town, 13<sup>th</sup> and Maize, 13<sup>th</sup> and Ridge, of which don't have big commercial development. In fact, at 13<sup>th</sup> and Maize, other than the Quick Trip on the southeast corner, there is residential development all the way up to the road. Finally the best case I can bring up is at 21<sup>st</sup> and Rock Road, you have major development north and south there as well and you have residential development at the northwest corner all the way up to the sidewalk. So why does this intersection here have to be developed with big box commercial beside me. Aside from that, I want to go back to, is with the addition of large big box store here, if we can count on 585 additional trip per peak eight hours, that is roughly 5,000 new trips to this intersection. Now to be generous, if you want to go to points south, east or southeast and you can't turn south onto Maize, what the quickest trip is going to be. You are going to jump on to Westlakes Boulevard, which goes from Maize Road to Tyler. This presents the possibility of people using these pass through streets to avoid major intersections. Take a quarter of that 5,000 and a quarter of that comes through Westlakes Boulevard between 12:00 and 8:00, that's an additional 2.5 to 3 cars per minute running along this road. Again, we have documented accidents along this road and people running at a high rate of speeds. There are numerous blind corners here, but most importantly, our kids and our families walk up and down this road. During the summertime the kids are walking to pools and during the school year they are walking to and from school. Like one of my colleagues said earlier, my biggest investment isn't so much my house, although that is second on my list, it is my children and the safety of my family that is most important to me. I hope all you guys can consider that when you take this for a vote and jump out of your shoes and into ours and look at all these points we brought up here today.

**NATHAN STOCKMAN, 10319 W. WESTLAKES COURT**, stated I just wanted to address one thing because I don't know if it was clear from earlier. The traffic has been mentioned a lot. Obviously we have a lot of residents and each one has a lot of concerns. Traffic has been one, as well as many others. The traffic that has been talked about, there is a major school to the north of us and there is a crosswalk on 34<sup>th</sup> Street. When you talk about a lot of traffic coming up from the south, a lot of traffic comes from the south to come to the school just north of us. They have that crossway, so it doesn't make sense to cross through our subdivision because they have their own cross way, right to the north of us if they want to get back south. You can't turn left on Maize; you've got to turn right. What I will do is go all the way across the neighborhood if I want to turn right and that's what everyone else might do. I live all the way over on the west side and I'm pretty much doing the same thing that people from outside the neighborhood would do. Parcel 7 gives us concern. Sam's is nice enough to tell us where they are putting their store, and they didn't have to I guess, but it was nice of them to do that, and it was nice that they met with us for four hours. We appreciated their representatives' time. But Parcel 7, it's going to be zoned when this thing goes through Limited Commercial, which will allow all the things you said it would allow and then we don't have any protection instead of the hedge row that has seen better days, and during the winter it really has seen better days. I'm a little lucky because I am across the street, but I feel for the people to the south that are going to see barren trees and see right in to whatever that is. I think a zoning buffer of some kind makes a lot of sense. General Office or Neighborhood Retail, but I guess it is up to you. I understand a lot of things get decided at platting and that's good, but there is at least a belief or understanding that this might be our last public chance to discuss this, where we as a public can come forward and state our concerns. So I really hope you just listen to us today.

**SHANON KALB, 9909 W. WESTLAKES COURT**, stated she didn't have anything planned for this, just my emotions. Her house backs up to the development. We lost \$150,000 on a house in Garden City and looked two years for a house here that is safe for our kids and a good place to live. We have moved three times. We own a fertilizer company and a trucking company. I can tell you that with the noise, because I own a truck line, I know what trucks are like. We purchased this house and two days later my

neighbor was nice enough to tell me that Sam's is coming in. It broke my heart because this was my family's future. We spent years coming into here and now, they say eight-foot berms; walls, noise, whatever. I would invite anyone of you to come to my house, but most of all the safety of my children, because I will suck up all my money and leave because my kids are not going to be safe to walk on that road. I'm an avid runner. My kids and I go biking, and there have been numerous times in the past month that we have almost been hit by cars just because people fly through there. Please come to my house and look out my back deck because my back deck will overlook that whole berm. This is our last chance to speak and I urge you, this is the best neighborhood we could've been blessed with and it totally broke my heart for the quality of our neighborhood that this is what's going to happen. So please, come by and see what we are talking about. If you could sit there and tell us to our faces that this is what you would want for your family, then maybe you are making the right decision. I can tell you from a resident, everybody is going to be affected by this. If this is where you feel a Sam's should be after being in our shoes, then maybe we are all thinking wrong, but I can tell you from living there that this is people's lives, children's safety. Who cares about the noise? I can wake up to noise every day, but please take your time and think about us. This isn't just about noise; it's about quality of life for everyone.

**DENNIS** stated that I know your recommendation at the beginning was to defer this, Mr. **LONGNECKER**, do you believe if we deferred this for two weeks that the details and some of the things we heard today and the letters and so forth could be worked out whether we could make a decision in two weeks.

**LONGNECKER** stated that they would prefer a month deferral with all that was heard. If you want two weeks, we can shoot for it, but that will mean an out of town agent will have to sit together with staff and the neighborhood and go over this stuff.

**DENNIS** stated he is not hard on two weeks. Do you believe in a month then that decisions could be made and we could have a final resolution of the case?

**LONGNECKER** stated we will have more resolution than we have now. I don't think we will ever be able to make everybody happy, but we can certainly do better than what we have now and hopefully be able to make a presentation where I am not ad-libbing on stuff that was handed in the day before the meeting. If we are going to have meetings, the neighborhood, staff and agent need to be present at these meetings. Everybody has to be hearing the same thing and work at the same solution.

**MILLER** stated that if you feel like if you heard enough today that you know what you would want to do, then do whatever seems appropriate. If what you heard today left you with more questions than answers, then it is appropriate to defer and let us come up with a staff report that responds to the revised CUP drawing that you were not able to see. That's kind of the bottom line; is where you think you are as a commission on the information you heard today.

**DENNIS** stated that I hope if we deferred it for a month that the homeowners could sit down with the applicant and the city so we can have the best decision we can make. The only concern that I have is that we have a lot of people here that are anxious for a decision and I would hate to bring them back. With that I turn it to the commission for a recommendation.

**G. SHERMAN** stated that you all had heard my feelings. Generally, when a neighborhood comes in complaining about something going on at the arterial corner, my first question was what did you think

was going to go in there. I've looked at this and I heard in the past the fears of people cutting through their neighborhoods and all that don't come to fruition. This corner is certainly appropriate for light commercial zoning, but I don't think it is appropriate for 40 acres of light commercial zoning and not at all appropriate for a Sam's. Especially not in the configuration we got. I'm sure we are working with a developer who wants to make a lot of money by sticking pad sites in here and the pad sites are preventing Sam's from being farther away from the neighbors. Maybe they could reach an agreement with the neighbors regarding distance and other things. There is going to be development here, and a good part of it will be commercial and office. We talk about two arterials here and I know 29<sup>th</sup> is an arterial street, but if you are familiar with that area at all, it's kind of an oversized collector. If you go either direction, there is not a lot of commercial on that street. I'm usually not in the business of telling businesses where to locate. I mean I'm a developer and spent six years working on New Market Square, but I think this one is just one step too far for something this big. I would move for a deferral, but I think they are too far apart to come together.

**MITCHELL** stated he agreed with Mr. **SHERMAN**. I don't think there is any operation that could resolve all of the differences with the neighborhood and the developer and what his experts have suggested today and what the applicant is proposing. I would not support the application as it sits, and I don't really see any way for those parties to come together within a reasonable length of time. So I won't support a motion to defer.

**ALDRICH** stated he understands a lot of the concerns and the issues that are going on, but we are not here to determine whether or not it is Sam's or somebody else approved to go into the site. What we are here for is if this is proper zone change request and I think that it is. I would like to support staff's comments and recommendations as far as looking at a deferral to give not only staff, but the property owners and the applicant adequate time to see what they can work out. We saw this similar situation take place a few years back at 53<sup>rd</sup> and Meridian and it took a lot of sit downs and a lot of talking and negotiations going on and I thought at that time Wal-Mart did a fabulous job of working with neighbors and the property owners that surrounded that area. I think they ought to be at least given that same opportunity here. I understand the concerns of the residents, it's a very nice high end area, but so is Harbor Isle and the Moorings, it's a pretty nice area to, and they were able to work things out so I would hope that we could see the same thing here. I would support a motion to defer.

**SHEETS** stated he thinks we ought to do what Mr. **LONGNECKER** said. We ought to defer also. I think we should give the developer time and I heard that some are not against it and they understand something is going to go there. Maybe the developer will show up in town and will sit down with homeowners and maybe come up with alternate plans. It shows he doesn't need the whole 40 acres, if he can do what he wants to do and take out... (inaudible). I suggest we follow Mr. **LONGNECKER'S** lead and let these gentlemen have 30 days to try to work something out with the homeowners and at that time we make a decision.

**KLAUSMEYER** stated he would like to commend the speakers, I think they did an excellent job, it was a great presentation by the homeowners. I think they are miles apart, but I am not opposed to a deferral to give them a last chance. I think there is some information that came out here today that hopefully the developers will take to heart and find some common ground and hopefully can make it work.

**G. SHERMAN** stated he wanted to correct something he said, I used the word Sam's before when I said this wasn't appropriate. What I was referring to was the intensity or the size of the Sam's building. I don't presume to tell a business where it should be, but I don't think this is appropriate for a store of that

size at that intersection. Again, if a deferral would help, and I think they understand about what all was spoken, but I saw some heads nodding at things and I think the developer probably understands that he is a long way from making us happy. If some time to talk would work, I wouldn't oppose it.

**WARREN** stated he also wanted to offer my appreciation to the audience with your well planned articulate arguments. I didn't agree with all of them and I know this is an emotional issue. I heard it in many of your voice. Probably the one that resonates the most is the adequate berming. The fact that the berm would not have any trees put on it for a long period of time. I think that would be an unfair situation. I think Mr. **SCHELLENBERG** said it best and the best solution would be to come up with an adequate berming situation. To citizens I would say be careful what you ask for in terms of an alternate type of development. A lot of developments when they go from residential to commercial, they go there with multi-family and I'm not so sure this wouldn't be a much better situation with proper berming and proper landscaping. This might be a better deal than a number of alternate situations that might work out for you. The best bet is to come up with a situation to give you the best berming.

**MOTION:** To defer for 30 days. To be heard again at the November 1<sup>st</sup>. MAPC meeting.

**WARREN** moved, **SHEETS** seconded the motion

**FOSTER** stated that I'm going to provide a substitute motion. Looking at it carefully, the application as it stands is not consistent with the Comprehensive Plan. There are only two zoning districts that are tied to local commercial, that's Neighborhood Office and Neighborhood Retail. This application is just too extensive for Limited Commercial being proposed for up to 40 acres, so I would make a motion that we disapprove the application as it stands.

**SUBSTITUTE MOTION:** To deny the application.

**FOSTER** moved, **MITCHELL** seconded the motion

**D. SHERMAN** stated he had a question for the applicant. Are you willing to meet with the neighborhood and have some good spirited cooperation, discussion on how to coexist out there?

**GASKEY** stated yes, and if I could add to that, we met with them last Wednesday evening and the premise of that meeting was to do just that, to talk about different alternatives. When the meeting was set up, my understanding was that is going to be with the affected homeowners, roughly the 14 homes that abut the property. There were approximately 32 people at the meeting so I would ask if we are to have a another meeting it would be to discuss the alternatives we can talk about, but not killing the project because a lot of folks just want to kill the project at that meeting and about moving the store somewhere else and moving the store further west and that was not the original intent of the meeting. So yes, we would be willing to have that meeting, but in the spirit that we be there to talk about buffering and berming and those types of things not about the site going away.

**D. SHERMAN** stated that a point of contention has been that you are not a decision maker. Is that true or false?

**GASKEY** stated that is true. I am the engineering consultant. I am not the developer. It has been referenced quite a few times. The developer is Sam's and they are purchasing the entire 40 acres, and they are going to develop their parcel and sell off the excess parcels.

**D. SHERMAN** asked is it possible to have a decision maker from Sam's at that meeting?

**GASKEY** stated yes it is possible.

**DENNIS** asked **GASKEY** if he had received the letter from the Fox Ridge homeowners association.

**GASKEY** stated that he has not.

**DENNIS** stated that if this is deferred, he hopes he will be provided the letter ahead of time so you can go through it and make sure you have a decision maker who can comment on each of these items.

**SHEETS** stated that he understand that he would not like to have all the homeowners show up, but that is not a possibility. They are entitled to show up, it is their neighborhood. You just better be ready to answer all their questions; every and all of them, from berms to traffic. You can't control who can come and who can't come. Maybe if this comes back, have eight or ten people do the presentation so all of you don't have to take off of work and maybe you send your top key guns that have the questions so we can get the answers. I'm not against the development by any means. I think it is too large. I think you should also come with a plan for Parcel 7. I don't think you leave it out to limbo. I don't think I could approve it not knowing what's going to be there.

**G. SHERMAN** stated that as long as we are talking to the applicant up here, the fact that Sam's is the developer doesn't make me feel better or worse. It makes me feel a little better that they have control of those pads in the front and know to win me over its going to take moving that building farther away from those neighbors. I don't know how that is going to work out, maybe back off the sides of the location of those pads.

**SHEETS** stated that is a good suggestion because those are 280-foot setbacks and when I quit counting when I was developing, I've built over 1,400 restaurants nationwide, I don't think you need 280-foot setbacks. I think 200 is fine, it will give them another 80 foot and probably not lose much.

**FARNEY** stated one thing that I will be looking at if it comes back, is traffic. The site plan has five entry points and some are pretty close to the hard corner because of the filling station. I don't agree with that, I think they need to be off of the corner. We just went through 21<sup>st</sup> and Maize and right now it is still a problem. Right now we are crossing seven lanes to get to the AT&T store. We can't have that. We need to be proactive now and get those entry points to that location removed, reduced or get a frontage road into the development, get the cars off of the street and into the parcel.

**KLAUSMEYER** stated we all have something to look at and I think the drainage is a major concern. The west side has had so many problems, granted we don't have 12 inch rains all the time, but we have to prepare for the three and four inch rains that cause problems also.

**MITCHELL** wanted to clarify that one of my objections to the application is this CUP and if something is brought back to change the zoning application to stay with this plan, that's why I would not support it. It's the plan that's wrong also.

**DENNIS** called a vote on the Substitute Motion

**SUBSTITUTE MOTION:** To deny the application.

**FOSTER** moved, **MITCHELL** seconded the motion, motion fails (3-9)

**DENNIS** called a vote on the Original Motion.

**MOTION:** To defer for 30 days to be heard again at the November 1, 2012 MAPC meeting.

**WARREN** moved, **SHEETS** seconded the motion, motion passes (9-3)  
**FOSTER, MITCHELL** and **MILLER STEVENS** opposed.

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### **NON-PUBLIC HEARING ITEMS**

- 9) **Case No.: A12-03** - Consistency of Proposed Wichita Unilateral Annexation of Areas Along 135<sup>th</sup> Street West, Generally Between 13<sup>th</sup> Street North and 21<sup>st</sup> Street North with the Wichita-Sedgwick County Comprehensive Plan (District V)

**Background:** On August 14, 2012, the Wichita City Council passed Resolution No. 12-195 establishing a public hearing on October 16, 2012 for the purposes of considering the unilateral annexation of land generally located along 135<sup>th</sup> Street West between 13<sup>th</sup> Street North and 21<sup>st</sup> Street North. The annexation area contains approximately 21.16 acres of land and public street right-of-way combined, with seven parcels of land comprising 7.37 acres of the annexation area. A map of the area proposed for annexation is attached.

On February 14, 2012, the City Council approved a project to reconstruct 135th Street West from 13<sup>th</sup> Street North to 21<sup>st</sup> Street North. Much of the street right-of-way for the project is not in the city limits and needs to be annexed. While much of the unincorporated street right-of-way adjoins property that is within the city limits and can be annexed by ordinance, a tenth of a mile stretch of the street right-of-way located south of 21<sup>st</sup> Street North does not adjoin property within the city limits. State law prohibits the City from annexing street right-of-way if the adjoining property is not already within the city limits unless the adjoining property also is annexed in the same proceeding.

In order to annex the adjoining properties without receiving an annexation request from the owners, the unilateral annexation method must be used. The unilateral annexation method requires the City Council to adopt a resolution indicating the City's intent to annex, including a description of the property to be annexed and a notice of the time and place for a public hearing to consider the matter. Copies of the resolution have been sent via certified mail to all owners of the properties proposed for annexation. Also, the resolution and a map of the area proposed for annexation will be published once in the official City newspaper not less than one week and not more than two weeks prior to the October 16<sup>th</sup> public hearing date.

Prior to unilaterally annexing property, Kansas statutes require that a service extension plan be prepared indicating the means by which city services will be extended to the area proposed for annexation. A

report stating the plans for the extension of municipal services to the proposed annexation area has been placed on file for public inspection in the City Clerk's Office. This plan has also been attached for your reference. A summary of this service extension plan is contained below:

*Land Use and Zoning:* The land use of the five parcels in the northern portion of the area proposed for annexation is single-family residential. The land use of the two parcels in the southern portion of the area proposed for annexation is electrical substation. These seven parcels proposed for annexation are zoned "SF-20" Single-Family Residential and will convert to "SF-5" Single-Family Residential if annexed.

*Public Services:* The City is capable of serving each of the seven parcels proposed to be annexed with water. To receive water service, individual property owners must request to connect to water service. Connection to water service will require the property owner to pay in lieu of assessment, water tap, and plant equity fees, as well as the cost to install private water lines. The City is capable of serving each of the seven parcels proposed to be annexed with sanitary sewer. In order to receive sanitary service, a petition requesting sanitary sewer service must be submitted that is signed by either a majority of the resident owners or the owners of the majority of the land area within the benefit district and property owners must pay assessments and plant equity fees, as well the cost to install private sewer lines.

*Street System:* 135th Street West will be reconstructed from a two-lane asphalt mat roadway with drainage ditches to a three-lane roadway with one through lane in each direction and a center two-way left turn lane. The intersection of 21st Street North and 135th Street West will be signalized and improved to five lanes at all four approaches to the intersection, including left turn lanes. A ten foot wide multi-use path will be constructed on the west side of 135th Street West, the available right-of-way will be landscaped, and street lights will be installed.

*Public Safety:* Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. Fire Station No. 21 is located immediately adjacent to the area proposed for annexation at 2110 N. 135th St. W. Upon annexation, police protection will be provided to the area by Patrol West Bureau Beat 199 of the Wichita Police Department, headquartered at 661 N. Elder.

*Public Parks:* West Meadows Park is the nearest City of Wichita park facility to the area proposed for annexation. West Meadows Park is located approximately 1 ¼ mile east of the annexation area at 1433 N. Parkridge. West Meadows Park is 1.5 acres in size and is developed with a basketball/multi-use court, tennis courts, children's playground, and picnic table.

*School District:* The annexation area is part of Unified School District 266 (Maize School District). Annexation will not change the school district.

*Financial Considerations:* After annexation, the City will collect a total of approximately \$2,632 (\$32.359/\$1000 x \$81,345 assessed valuation) in property taxes annually from the five residential properties proposed for annexation. The amount of property taxes to be collected from the two electrical substation properties cannot be estimated as utilities are not appraised and assessed for property taxes on an individual property basis. Property owners in the annexation will no longer pay property taxes to Attica Township, County Fire District, and South Central Kansas Library System. The overall property tax rate will change from 115.478 mills to 122.132 mills, a 5.8% increase.

**Analysis:** Kansas statutes governing unilateral annexations provide for official notification to certain local officials, including planning commissions having jurisdiction in the area. Additionally, Kansas statutes require that the planning commission review the proposal and make a finding of compatibility or incompatibility with any adopted land use or comprehensive plan relating to the area and the annexing city. Staff has reviewed this proposed annexation and has determined that it is consistent with the Wichita-Sedgwick County Comprehensive Plan. The proposed annexation area falls within the 2030 Wichita Urban Growth Area, as shown in the Comprehensive Plan.

**Recommended Action:** That the Metropolitan Area Planning Commission find the unilateral annexation proposed by Resolution No. 12-195 of the City of Wichita to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

**MITCHELL** stated that he has talked to you a number of times about failures of cities making unilateral annexation application not providing a service plan and this is the first one I have seen that makes any sense. Congratulations.

**MOTION:** MAPC finds that Resolution No. 12-195 of the City of Wichita to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

**MITCHELL** moved, **FARNEY** seconded the motion, approved by a vote of (9-0).

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**10) Other Matters/Adjournment**

The Metropolitan Area Planning Commission adjourned at 5:03 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

