

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

November 1, 2012

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, November 1, 2012, at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: David Dennis, Chair; George Sherman, Vice Chair; Bob Aldrich; Shawn Farney; David Foster (Out @3:30 p.m.); Bill Johnson; John W. McKay Jr.; Debra Miller Stevens; M.S. Mitchell; Morrie Sheets; Don Sherman (Out @ 4:00 p.m.) and Chuck Warren. Commission members absent were: Don Klausmeyer and Ron Marnell. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Jess McNeely, Senior Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Robert Parnacott, Assistant County Counselor and Jeff Vanzandt, Assistant City Attorney.

1. Approval of the prior MAPC meeting minutes. There were no minutes for approval.

CHAIRMAN DENNIS announced that item #7 – ZON2012-00029 has been withdrawn by the applicant.

CHAIRMAN DENNIS also announced that item #8 – DER2012-00008 has been deferred and will not be heard by the Commission at today’s meeting.

ALDRICH requested that item #6 – ZON2012-00028/CUP2012-00031 be taken up first on the agenda.

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2012-00022: Final Plat – FAWSON ACRES ADDITION;** located on the southeast corner of 151st Street West and Maple.

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

STAFF COMMENTS:

- A. The applicant shall contact City of Wichita Environmental Health to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage. A memorandum shall be obtained specifying approval. At such time public sewer service becomes available and feasible to serve this property, connection shall be made.
- B. City of Wichita Public Works and Utilities Department has advised that water is available. The owner will need to provide fees in lieu of assessment for transmission and distribution. A No Protest Agreement for future extension of sanitary sewer is also needed.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. City Stormwater Management advises that the drainage plan is approved, subject to the floodway reserve being re-delineated based on the proposed 100-year flood elevation. Normally the platted area located below the 100-year floodplain is located in a drainage reserve, floodway reserve, and/or

a floodway easement. The current flooding risks need to be more accurately displayed on this residential subdivision plat. If the floodplain is filled in the future, then the drainage plan needs to address compensatory storage for the displaced flood storage.

- E. Traffic Engineering has approved the access controls subject to complete access control being denoted along the corner clip. The plat proposes one access opening along both Maple and 151st Street West.
- F. A blanket pipeline easement exists for the area involved in this plat. The Applicant shall provide documentation that the easement has been confined. Any portion of this easement impacting this site shall be denoted on the plat and shall be properly referenced. A recorded copy of the confinement of the easement shall be submitted.
- G. The recording information is needed for the pipeline. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the appropriate governing body.
- H. County Surveying advises that bearings and distances along the Floodway Reserve boundary needs to be corrected.
- I. County Surveying advises that the northwesterly line and the southeasterly line of the pipeline easement are not parallel by bearings shown. The dimension of 37.7' would indicate the easement is parallel.
- J. County Surveying advises that the dimension of 43.20' along the north line to locate the Floodway Reserve needs to be corrected.
- K. County Surveying advises that a bearing and distance are needed along the northwesterly line of the plat (the corner clip).
- L. County Surveying advises that the building setback lines need to be corrected along the right-of-way taper.
- M. County Surveying advises that an on-site benchmark is needed.
- N. If owner's private sewer line crosses the pipeline easement the pipeline company will need to be contacted.
- O. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants

required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- R. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- S. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- X. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

NEIL STRAHL, Planning Staff gave a brief update on the status of the application, which was approved by the Subdivision Committee.

ALDRICH requested clarification that this was a final plat and asked if several other items shouldn't be completed at this stage of the application process. He expressed specific concerns about the easement for the pipeline.

STRAHL commented that it is customary to allow the applicant additional time until the item is scheduled to go before the governing body, unless the Subdivision Committee required that all conditions be met by the applicant prior to the Planning Commission meeting.

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

JOHNSON moved, **G. SHERMAN** seconded the motion, and it carried (11-0-1).
MCKAY – Abstained.

2-2. SUB2012-00026: One-Step Final Plat – DEWITT 5TH ADDITION; located ½ mile north of Pawnee along the east side of Hoover Road.

NOTE: This is an unplatted site located within the City of Wichita. The site has been approved for a zone change (ZON2012-00023) from SF-5 Single-family Residential to LI Limited Industrial.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water service is available but sewer (main and lateral) needs to be extended to serve the lot being platted.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the applicant's drainage plan.
- D. Traffic Engineering has approved the access controls. The plat proposes two access openings along Hoover Road located 200 feet apart.
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- F. Traffic Engineering has requested a 10-foot sidewalk and utility easement along Hoover.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- K. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery

without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.

- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- P. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

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

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

3. PUBLIC HEARING – VACATION ITEMS

- 3-1. **VAC2012-34: City request to vacate a drainage easement dedicated by separate instrument.**

APPLICANT/AGENT: City of Wichita, c/o John Philbrick (applicant) MKEC, c/o Brian Lindebak (agent)

LEGAL DESCRIPTION: Generally described as vacating a 20-foot wide portion of a drainage easement dedicated by separate instrument (Film 0943, Page 1264), located within a portion of Lot 1, Block 1, Larksfield Place Addition, Wichita, Sedgwick County, Kansas (see attached legal & exhibit)

LOCATION: Generally located between Woodlawn Boulevard and Rock Road, on the southeast corner of 29th Street North and Gouverneur Street (7373 E. 29th St. North, WCC #II)

The applicant proposes to vacate the described portion of the drainage easement dedicated by separate instrument. Stormwater has equipment in the easement. The storm conduit serves the development as a private line. Industrial Revenue Bonds were used to finance the drainage improvements on the site and the easement is the result of the drainage improvements on the site. There are no public utilities located in easement. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the site. The Larksfield Place Addition was recorded with the Register of Deeds July 14, 1986.

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

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

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time October 11, 2012, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the described drainage easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Abandonment or relocation/reconstruction of any/all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. Regarding Westar Energy equipment, the applicant can contact Becky Thompson, the Construction Services representative for this area at 316-261-6320. Provide approved project numbers to Planning prior to the case going to City Council for final action.
- (2) Provide any needed easements for relocated utilities, prior to this case going to City Council for final action.
- (3) Because Industrial Revenue Bonds were used to finance the drainage improvements on the site, any additional terms for the vacation of the easement shall be addressed by the City of Wichita's Real Estate Manager, prior to the request going to City Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Abandonment or relocation/reconstruction of any/all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. Regarding Westar Energy equipment, the applicant can contact Becky Thompson, the Construction Services representative for this area at 316-261-6320. Provide approved project numbers to Planning prior to the case going to City Council for final action.
- (2) Provide any needed easements for relocated utilities, prior to this case going to City Council for final action.
- (3) Because Industrial Revenue Bonds were used to finance the drainage improvements on the site, any additional terms for the vacation of the easement shall be addressed by the City of Wichita's Real Estate Manager, prior to the request going to City Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

3-2. **VAC2012-35: City request to vacate a portion of a platted access control.**

APPLICANT/AGENT: Fisel Corp., c/o Faissal Abou Faissal (applicant/owner) Meridian Construction, LLC (agent)

LEGAL DESCRIPTION: Generally described as allowing the existing drive onto Central Avenue from Lot 2, Block 4, Five Star Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located west of Oliver Avenue, on the northwest corner of Central Avenue and Old Manor Street (WCC #I)

REASON FOR REQUEST: Allow existing drive/redevelopment of the site

CURRENT ZONING:

Subject property is zoned LC Limited Commercial (“LC”). Abutting and adjacent properties are zoned LC, SF-5 Single-Family Residential (“SF-5”), NR Neighborhood Retail (“NR”) and B Multi-Family Residential (“B”).

The applicant is requesting consideration to vacate a portion of the platted access control on Lot 2, Five Star Addition, to allow the existing 24-foot wide drive onto Central Avenue to remain; this is a clean-up request. As platted, one drive onto Central was allowed/located on the west 30 feet of (the platted) Lot 2’s 125.04 feet of Central frontage. The existing drive is basically located in the middle of the platted Lot 2, which provides approximately 70 feet of separation from the west, abutting car wash’s drive; as platted Lot 2’s drive would be approximately 20 feet from the car wash’s drive. Subdivision standards require 200-foot of separation of right in-right out drives. Subdivision standards requires a 200-foot offset for drives not lined up on the opposite sides of an arterial and not having conflicting left turns. There are drives (serving small commercial development) located south of the site, across Central, that do not line up with the site’s drive. Central is a four-lane arterial, with a center turn lane at this location. Subdivision Regulations (“SD”) allow consideration of modifications to those standards; SD 10-104. In the past the SD and MAPC have considered modifications to these standards.

The applicant is also showing a drive onto Old Manor Street. The Five Star Addition does not show platted access control along its Old Manor frontage, nor does the plat’s text address access onto Old Manor. The drive lines up with a drive located east of the site, across Old Manor; which appears to serve two four-plexes. There are no drives located north of the site, which is developed as a church. There does not appear to be public utilities located in the vicinity of the two drives’ approaches into the Central or Old Manor right-of-ways. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the site. The Five Star Addition was recorded August 11, 2000.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time October 11, 2012, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the described portion of platted access control and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

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

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Per the approval of the Traffic Engineer, vacate the platted access control along the site's Central Avenue frontage to allow the existing opening to Lot 2, Five Star Addition from its Central Avenue frontage. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.

- (2) Dedicate access control by separate instrument on Lot 2, Five Star Addition's Central frontage, allowing only the one existing drive. This must be provided to Planning prior to the case going to Council for final action.
- (3) Dedicate access control by separate instrument on Lot 2, Five Star Addition's Old Manor Street frontage, allowing one drive, as approved by the Traffic Engineer. This must be provided to Planning prior to the case going to Council for final action.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense. If necessary provide all plans and any guarantees needed by Public Works to ensure any relocation or reconstruction of utilities will be completed. Either the guarantee(s) and/or approved plans must be provided to Public Works prior to the case going to Council for final action. Regarding Westar Energy equipment, the applicant can contact Becky Thompson, the Construction Services representative for this area at 316-261-6320.
- (5) All improvements shall be according to City Standards and at the applicant's expense, including; the construction of any new drive(s) from the site. Provide Public Works with a guarantee (approved project/plans) to ensure that these and any other associated improvements will be made. If the drives are not being immediately constructed, provide a drive approach certificate, which will be recorded with the Register of Deeds. Either the guarantee(s) and/or the drive approach certificate must be provided to Public Works (guarantee) or Planning (drive approach certificate) prior to the case going to Council for final action.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

PUBLIC HEARINGS

4. **Case No.: ZON2012-00024/CUP2012-00021** (Deferred from the 9/20/2012 MAPC Meeting) – Curtis W. and Karen S. Rink and Leo M. and Vivian L. Rink (owners) and Kimley-Horn and 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

NOTE: Except for revisiting typos the staff report remains the same as the September 20, 2012, report, except for the comments made in this section of the report and the recommendation (staff requested a deferral) on the request. At their September 20, 2012, meeting the MAPC deferred on making a recommendation on the proposed zone change and CUP. The MAPC directed the applicant, staff and the neighborhood to continue to work on finding resolution to (but not limited to) drainage, traffic, moving the Sam's building further from the abutting Fox Ridge single-family residential neighborhood, landscaping and buffering. The applicant has provided a list of changes (see attached Comments on Changes) to the proposed CUP, with the most significant as follows:

A.

- (i) That portion of Reserve A located on the east sides of the CUP's Parcel 1 and Parcel 7, that abuts Reserve G, which abuts Lots 14-20, Block, 4, Fox Ridge Addition, has increased from 90 feet wide to 140 feet wide. By adding the existing 60 feet of Fox Ridge's Reserve G to Reserve A's 140 feet, 200 feet of landscaped buffering will be provided.

- (ii) That portion of Reserve A located on the north side of the CUP's Parcel 7 that abuts Reserve C (east), Lots 6-13, Blk. 4, and a portion Reserve G (west) went from 90 feet to 120 feet. This provides 120 feet of landscaped buffering.
- (iii) That portion of Reserve A located on the northeast side of the CUP's Parcel 7 that abuts only Reserve G, Fox Ridge Addition, went from 35 feet wide to 60 feet wide. Adding Reserve A's 60 feet with the undulating width of this portion of Fox Ridge's Reserve G provides approximately 110- 135 feet of landscaped buffering at the narrowest and widest points.
- (iv) That south most portion of Reserve A abutting the unplanted tract remains 35 feet wide, via verbal communication to the agent.

The additional width to the above portions of Reserve A pushes commercial development further way from the existing single-family residential development in Fox Ridge. These changes were made in response to the direction given by the MAPC. (See #5, Comments on Changes). Reserve A shall be zoned SF-5 and will be platted. Any changes to Reserve A's uses (landscaping, berms, utilities confined to easements and the inside, south and west sides, 10 feet allowing 15-foot tall pole lights and a metal security fence) would require a vacation which is a public hearing.

- B. A Concept Drainage Plan has been submitted to the City's Public Works Stormwater Manager/Engineer with the CUP. Required guarantees for drainage shall be provided at the time of approval of the plat. The Stormwater Engineer is in agreement with the data provided by the applicant. These changes were made in response to the direction given by the MAPC. (See #6, Comments on Changes).
- C. Access Controls, deceleration lanes, left turn lanes, additional right-of-way and other improvements shall be as shown on the final plat. A concept traffic study has been submitted to the City's Traffic Engineer as part of the approval of the CUP. The Traffic Engineer is in agreement with the data provided by the applicant. These changes were made in response to the direction given by the MAPC. (See #8, Comments on Changes).
- D. Landscaping in Reserve A where it abuts the SF-5 zoned residential development/Fox Ridge Addition along the CUP's north and east sides will be increased by a minimum of 1.5 times the code's required size, height and quantity. All landscaping for Reserve A is required to be completed prior to the completion of construction on the first Parcel, with the exception of the existing row of mature trees to remain in Reserve A along the north side of Parcel 7, until such time Parcel 7 is developed. The minimum height for conifers will be ten (10') feet. Two rows of conifers will be provided with a staggered spacing of 20 feet. This addresses the concern expressed by the Fox Ridge HOA. (See #12.D, Comments on Changes).
- E. The existing tree stand along the northern portion of Parcel 7, in Reserve A, will be maintained and, if needed, replanted on a one tree to one tree basis per the Landscape Ordinance Guidebook and 12 D above. (For example, if a six inch caliper tree is dead, it will be replaced with a tree 1.5 times the code required size.) Once a development permit is requested for Parcel 7, the trees will be removed and replaced with an earthen berm of a minimum height of 12 feet (per UZC, Sec.III-E.1f, substituting berm for wall or fence). The landscaping will be in accordance with 12 D. An inventory of the existing trees with a minimum 3-inch caliper or if an evergreen/conifer a minimum of 5 feet tall will be made prior to the issuance of any building permit. This addresses the concern expressed by the Fox Ridge HOA. (See #12.G, Comments on Changes).

F.

- (i) A landscaped earthen berm, a minimum of 15-foot high (per UZC, Sec.III-E.1f, substituting berm for wall or fence), located within Reserve A shall be constructed along the east property line of Parcels 1 and 7 where it is adjacent to Lots 14-20, Block 4, Fox Ridge Addition.
- (ii) A landscaped earthen berm a minimum of 8-foot high (per UZC, Sec.III-E.1f, substituting berm for wall or fence), located within Reserve A, shall be constructed along the northeast property line of Parcel 7, where adjacent to Reserve G, Fox Ridge Addition.
- (iii) If the Fox Ridge HOA, the owner of Reserve G, Fox Ridge Addition and the developer of the CUP's Parcel 1 all agree to do so, the required CUP's berming may be combined with the abutting Fox Ridge berms to create a single screening berm rather than two separate berms.
- (iv) A landscaped earthen berm a minimum of 3-foot high (per UZC, Sec.III-E.1f, substituting berm for wall or fence), located within Reserve A shall be constructed along the east property line where adjacent to the unplatted SF-5 zoned single family residence.
- (v) Finished berms will have 'scalloped' top to ensure that the top of the berms will not be a straight plane, but in no case shall the berm height be reduced below the prescribed minimum height.

The proposed berms eliminate the required 6-8 foot tall masonry wall. Previously the tallest proposed berms were 8-foot tall. The possibility of combining the CUP's Reserve A with Fox Ridge's Reserve G, makes the possibility of even taller berms than the above stated heights, plus it would eliminate the 'valley' between the two properties' berms. This addresses the concern expressed by the Fox Ridge HOA. (See #13, Comments on Changes).

G. This reflects more restrictions on uses. This addresses the concern expressed by the MAPC. (See #17, Comments on Changes). Staff is in agreement with the above changes and the other provisions of the CUP.

Two of the remaining (but not limited to) points of contention between the applicant and the Fox Ridge HOA are the design of the proposed Sam's building and traffic lights for this stretch of Maize Road.

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 29th 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 29th 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 37th Street North with another approximately 24-acres of undeveloped LC zoned land located northwest across Maize Road and 37th Street North.

South of the site, across 29th 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 29th and 21st 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 Sports 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 21st and 29th Streets is the mid-mile located, SF-5 zoned Chadsworth 1st and 2nd Additions (1990 & 1992), which has single-family residences’ back yards abutting Maize. The Chadsworth Additions have access to 21st Street North and Maize Road.

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 (3rd) revised CUP and thus changes to the CUP; staff had not received the 3rd version of the CUP at the time of this mail out.

As previously noted, the MAPC at their September 20, 2012, meeting deferred on making a recommendation on the proposed zone change and CUP. At that meeting the MAPC directed the

applicant, staff and the neighborhood to continue to work on finding resolution to multiple considerations. Many people attended the September 20, 2012, MAPC meeting. Comments at that meeting ranged from opposition to the zone change to modifying the proposed CUP. There was one large neighborhood meeting held at the Maize South Elementary that was attended by approximately 90-100 neighbors, the representatives of the applicant and staff. There have been several smaller meetings held as well.

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 29th Street North and the four-lane, principle arterial street Maize Road; WAMPO Federal Roadway Functional Classification. 29th has center turn lanes, while only the south side of Maize has a center turn lane. This intersection has traffic lights. 29th 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 29th. 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 29th. 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 29th Street North, and its having no vehicular access through residential streets or neighborhoods meets the locational criteria of the Comprehensive Plan for regional commercial development. Additional right-of-way for road improvements, Ingress and egress onto Maize Road and 29th 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. Based on the information available at the time of the public hearing, staff recommends APPROVAL, per the approved provisions of the CUP and platting within a year of approval of the zone change and CUP by the governing body.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The 29th 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 37th Street North with another approximately 24-acres of undeveloped LC zoned land located northwest across Maize and 37th.

South of the site, across 29th 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 29th and 21st Streets North, Maize Road is pretty much stripped 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 21st and 29th Streets is the mid-mile located, SF-5 zoned Chadsworth 1st and 2nd Additions, which has single-family residences’ back yards abutting Maize. The Chadsworth Additions have access to 21st 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, 29th Street North, coupled with the prevailing commercial zoning and development of Maize Road from 21st Street North to 37th 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 Sec.III.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 and its having no vehicular access through residential streets or neighborhoods meets the locational criteria of the Comprehensive Plan for regional commercial development. Ingress and egress onto Maize Road and 29th 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.

G. SHERMAN asked if staff was satisfied with the Traffic Report.

LONGNECKER said he was.

ALDRICH asked what was the required width for a 4-lane arterial street.

PAUL GUNZELMAN, CITY TRAFFIC ENGINEER said typical widths for through lanes are 11 feet, center left turn lanes are 12 feet, which equals 44 feet, plus 5 feet for curb and gutter for a total of 49 feet. He commented that Maize Road is already 4 lanes and it is scheduled to be restriped to allow for a turn lane into Maize High School. He briefly reviewed the traffic analysis and patterns provided by the applicant.

FARNEY asked if there would be a traffic signal at Maize Road and drive #5.

GUNZELMAN replied that the Traffic Report does not warrant a signal at this time since it is a private drive; however, he said when that changes, the City would request a petition and the applicant would pay for it at that time.

FARNEY asked who generates that and is there a periodic review by City staff.

GUNZELMAN said the City follows the Uniform Traffic Control Devices Manual. He said they do a traffic count and then get the signal project scheduled for the Capital Improvement Program (CIP) if a signal is warranted, if not, they keep the location on a list and check it periodically.

FARNEY clarified that drive #5 was the only way to go south on Maize Road.

GUNZELMAN replied that drive #5 and drive #7 both had "full movement." He clarified that the traffic analysis provided by the applicant did not warrant the signal at this time, but added that could change in the future.

CHAIRMAN DENNIS announced that most if not all of the Planning Commissioners had received ex-parte communication on the application via e-mails.

KEVIN GASKEY, 1316 GARDEN GROVE COURT, PLAIN OAK, TEXAS, KIMLEY-HORN & ASSOCIATES, ENGINEERING CONSULTANT FOR THE APPLICANT (SAM'S CLUB) referenced additional information submitted to the City since the last hearing. He referred to the Traffic Report which was reviewed and approved by City Staff. He said a final report will be submitted at the time of platting. He said no signalization is required based on the counts and warrants for the parcel. He said a drainage report on the parcel was also submitted and reviewed and approved by City Staff. He said an updated report will be submitted at the time of platting. He commented that they have had 5 meetings with homeowners and the homeowner's association president. He said they have made numerous changes to the site plan and CUP.

GASKEY briefly reviewed a slide presentation and the changes the Planning Commission requested as follows: changing one of the reserves from 70 to 120 feet; one from 35 to 60 feet and one from 60 to 140 feet and increasing the distance from the single-family homes to the east. He said that changed the 1.77 acres of reserves on the original CUP to 5.58 acres. He added that between the increased reserves, right-of-way dedication and retention ponds, the total development has decreased from 38 to 29.73 acres of usable commercial acreage on the overall parcel. Referring to the site plan he mentioned that the distance from the reserve behind residential to the east to the truck docking area increased from 150 to 230 feet. In addition, he said the distance from the rear property line of the single-family homes to the building increased from 235 to 315 feet. He added the height of the truck dock has also been increased from 10 to 12 feet, in addition to providing a 90-foot screening wall. He reviewed traffic patterns referring to the aerial for right-in/right-out and full access locations. He said landscaping had been increased on top of the berm to a double row of 10-foot high conifers spaced at 20 feet on-center, which exceeds the Unified Zoning code (UZC) by two. He said they are also proposing to increase the native grasses on the reserves and the caliper trees by 1½. He said surrounding homeowners had expressed concern regarding security so they have agreed to install a 6-foot metal fence to the east of the property. He said trees located north of the property will remain. He referenced a slide depicting how the 12-foot berm on the north would look when completed. He said once Parcel 7 is developed the existing trees would be removed and a double row of conifers would be planted on a 12-foot berm with a 120-foot reserve and the metal fence would be tied into the existing 6-foot concrete wall. He referenced several cross sections looking from the east to the west through the truck dock area; existing home elevations from 1,360 to 1,353 and the proposed 15-foot berm with a top elevation of 1,371. He said the building height in the rear will be approximately 1,387. He said the top of the berm will be 1,371 with a 10-foot conifer on top of it for a total of 1,381.

GASKEY said additional information had also been requested on the building design. He referred to a revised building elevation plan. He mentioned the pedestrian canopy, pilaster height and change in color scheme to create a differentiation along the building façade.

MOTION: To allow the agent 5 more minutes of speaking time.

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

GASKEY mentioned the addition of the canopy at the tire and battery center and pilasters along the Maize Road side of the development. He briefly reviewed the north, west and easterly elevations comparing the current elevations with what was presented on September 20, 2012. He also showed several perspectives of the berm to the northwest, from Maize Road looking back to the east (both showing an increase in the height of the parapets to hide the rooftop units), which was one of the concerns of the homeowners association.

MITCHELL questioned the size of the pond areas which Mr. Gaskey referred to as 2.8 acres, which he indicated is considerably more than shown on the site plan.

GASKEY referred to the site plan which showed the 3 pond areas equaling 2.8 acres.

G. SHERMAN asked about the metal fence and if it was chain link.

GASKEY replied that the fence was a 6-foot wrought iron metal fence with metal bars with 4-inch spreads.

FOSTER asked about the Peachtree, GA and Lincoln, NE Sam's Club architectural development which seemed more in keeping with the neighborhood compared to the elevation views Mr. Gaskey was presenting.

AYSHA MOORE-ARROYO, SHADE O'QUINN ARCHITECTS, 211 N. RECORD STREET, DALLAS, TX said they were not involved with development of the Peachtree, Georgia, Sam's Store. She said with the Lincoln, Nebraska, location they were tied to development standards and design guidelines.

CHAIRMAN DENNIS opened the matter to public comment and reminded those present that the Planning Commission held a public meeting on this item previously on September 20, 2012. He asked speakers to address any new items and not re-hash items from the previous meeting.

SARA LAUFFER, 9901 WESTLAKES COURT she said she was present to represent her neighbors (who she asked to stand) who have a strong opposition to the zoning change proposed at 29th and Maize Roads. She mentioned issues that will adversely affect neighbors if the zoning change is approved including: increased traffic, safety of local residents and children at Maize schools, drainage, noise and air quality, which affect their quality of life and property values. She implored the Planning Commission to remember the presentations made at the last public meeting regarding these issues because they have the same concerns. She said the Commission gave clear directives on what they wanted addressed during the 30-day deferral period including a drainage study, a plan for Parcel 7, changes to the current entry and exit plans. In addition, she said additional space was requested between the loading docks and residential areas. She said the applicant was also asked if they would be willing to meet with residents and City Staff with a decision maker present. She said the residents have had only 2 meetings with the applicant. She said the Staff Report indicates there has been extensive dialogue with the neighbors, applicant and staff regarding the CUP. She said the neighbors do not believe there has been "extensive" dialogue regarding this issue. She said when the neighbors met with the applicant on October 10, they were expecting a meeting with discussion and negotiation with the decision maker. She said instead they were given a presentation reflecting the changes that had been made since the original proposal. She said there was no discussion and no negotiation because again the applicant did not provide a "decision maker." The company representative present at the meeting indicated that any decision would need to be approved by legal and his superiors. She said it was clear there was no intention of making any decisions or compromises at the meeting; that it was held just for show; and that the applicant is not interested in their concerns or what the neighbors have at stake. She said they understood the deferral was granted to give the applicant time to work with the neighbors. She said this was the only meeting held after the deferral and the neighbors do not believe the applicant met the commitment they made to the Planning Commission at the previous planning hearing. She asked the Planning Commission to consider the petition signed by 281 people (representing 417) and deny the requested zoning change and uphold the guidelines of the Functional Land Use Plan, which indicates that Limited Commercial is not in conformance with the land use map. She said the map indicates local commercial. She said either Sam's will find a different, more suitable site or the nearby homeowners will bear the brunt of considerable decreases in their home values and in the reduced quality of life.

THOMAS LUTHER, 10128 W. WESTLAKES COURT said he wanted to discuss intensity. He said the heart of their problem with the proposed development boiled down to one word "buffer." He said

any development at 29th and Maize Road is supposed to be of the type that creates local, commercial business that is compatible with the residential neighborhood. He asked if large trucks unloading at a box store in the middle of the night next to someone's bedroom is a buffer. He asked if a regional anchor store was residential. He said the developer plans to develop an ecosystem of commercial development with another large box store on Parcel 7. He said this area will become another Market Square North. He said once this development is complete, surely there will be other large scale retail development on the 2 other corners of the intersection. He suggested moving this development to the southwest corner of the intersection which would put streets between an established residential neighborhood and this new business. He asked the Planning Commission to be realistic about traffic and commented on the 7-lane intersection with left, right and center turn lanes and stop lights that the neighbors have to use daily. He said access to the businesses should be kept away from 29th and Maize and suggested a frontage road. He said that will eliminate shoppers cutting through the neighborhood to avoid left-hand turns. He said their experience at 21st and Maize taught them that it is easier to build the infrastructure now before all the traffic arrives. He asked why is all this development happening so far away from Kellogg and K-96. He referred to the City's Land Use Plan that called for separation from large scale development and the residential area. He said it seems like placing a big box store at this location is a violation of what was intended for the neighborhood. He asked wasn't this a poor choice.

ROGER NICE, 10105 W. WESTLAKES COURT said he would like to talk about Parcel 7 on the north side of the development, even though the Sam's store would not be located there. He said at the previous meeting it was suggested that the applicant bring a plan as to what they intended to do with Parcel 7 to the Planning Commission for review. He said to date, no plan has been submitted which creates more uncertainty than already exists on whether or not LC development is appropriate for 29th and Maize. He said without knowing the plan, how does the community know how to evaluate the protective overlays that have been proposed at today's meeting. He asked how the City can know how this will affect the subdivision without the uses being known. He said Sam's own traffic study which states that the analysis indicates that the proposed drive 5 at the Maize Road intersection is expected to operate at an unacceptable rate of service once the Sam's and north parcel has been constructed. He said the Commission will hear a lot from the neighbors today about the intensity and uncertainty of the site. He said until a plan is submitted for Parcel 7, the homeowners would like to see that parcel left as it is currently zoned. He said Fox Ridge and the neighbors have requested that this development include some transitional zoning and they believe Parcel 7 is a place where that can happen.

JACK MOCK, 10215 W. WESTLAKES COURT said he wanted to talk about screening and the uncertainty. He mentioned the view from his deck along the hedgerow which he said consisted of approximately 20 trees, 4 rows deep including conifers, which may be a very good buffer; however, since they do not know what is going to be developed on Parcel 7, how can they judge that. He said as soon as a building permit is issued for Parcel 7, that hedgerow consisting of hundreds of trees will be removed and in its place will be a 12-foot berm with approximately 120 trees. He asked if that was going to be adequate buffering and said the neighbors don't know. He said there could be a loading dock and truck traffic on that side of the development. He mentioned that drive 7 will abut the reserve. He referred to a picture of a sample berm and asked if that would be adequate.

SHEETS asked if the speaker would prefer that the trees be left as is.

MOCK said he wouldn't know because they do not know what is going to go on parcel 7. He said the present trees may not provide them with the buffering that they require.

SHEETS referred to item #17 in the Staff Report that indicated what was planned for Parcel 7.

MOCK responded that could include a big box with a loading zone. He requested that the zoning be denied until the neighbors can get answers to these questions.

REBECCA JONES, 9955 W. WESTLAKES COURT said noise is a major concern due to the proximity of the proposed development to the residential homes and elevation of their homes in comparison to the commercial properties. She said a berm and trees will not diffuse the noise from the semi-trucks and trash trucks. She said trash pickup is restricted in the CUP; however, deliveries were not because Sam's staff indicated that was not possible from an operations standpoint. They also indicated that stocking of shelves occurs between 9:00 p.m. and 6:30 a.m. and that is when the trucks are there to be unloaded. She said it is essential that the Noise Ordinance is not violated due to large commercial development. She referenced the Wal-Mart located at 53rd and Meridian and said this was a good example of a negotiated resolution between Wal-Mart and the inhabitants of Harbor Island and the Moorings. She said Fox Ridge would be happy with 2,000 feet between their residences and this commercial development. She mentioned alternative locations that already have LC zoning and other nearby locations forecast to be regional commercial in the Wichita-Sedgwick County Comprehensive Plan. She said an alternative location would address other issues such as traffic, noise and overdevelopment of a site so close to residential zoning. She said LC would have an economic gain for the developer but would have a detrimental effect on surrounding residential areas. She said berms and trees will not change the fact that in the Comprehensive Land Use Plan, this area is shown as local commercial. She said they have been asked what did they think would happen to the land and they said they thought when a zoning change was requested; it would comply with the Comprehensive Plan. She said they took the time to research what could happen on the site in the future, using the only resource available to them which was the 2030 Functional Land Use Guide located on the City's WEB Page. She said they purchased their home in January and the price they paid and location was based on the land being used as currently zoned single-family residential or potentially local commercial which was something they thought they could live with as a neighbor. She said the definition of local commercial specifically states commercial that does not have a significant regional market draw. She said local commercial in the Unified Zoning Code (UZC) consists of neighborhood office and neighborhood retail. She said rezoning this to LC will have a significant impact on their property values and the quality of their lives. She said because the Comprehensive Plan was developed by City staff with significant public input, they did trust that it was reliable and would be upheld. She said if this rezoning is considered a natural progression between 29th and Maize then the Comprehensive Plan should have been updated to reflect that. She said the Plan should be reviewed annually so there are ample opportunities to make changes. They trusted that the proper procedure would be followed as covered by State Law to make appropriate amendments to the Plan. She said allowing a zoning change on this corner risks setting a precedent for the other corners at the intersection to be rezoned LC. She said many of the changes that the HOA Board requested have been met; however, that was not the requests of local residents particularly those who property abuts the property. She said the 417 people represented by the petition previously submitted respectfully request that the Planning Commission disapprove the zoning change because it does not meet the definition of local commercial and does not uphold the Comprehensive Plan.

JIM MORGAN, 9913 W. WESTLAKES COURT said they do not believe the traffic study the Planning Commission asked for and received is very good. He said the neighbors feel that the study grossly underestimated the traffic around the intersection currently and in the future. He mentioned a traffic study conducted a year ago that measured about 2,500 more cars per day than was reflected in the

report provided for this project. They said they feel the closure of Maize from 45th to K-96 contributed to the lesser count. He added that although 21st and Maize construction is complete, many people do not know that and avoid the intersection, so 29th and Maize is avoided also. He said the study only gives projections to 2014. He said the study also grossly underestimated the allowable gross floor area of the property. He said the study shows 276,000 square feet, but the CUP shows up to 490,000 square feet. He said the study also did not take into account development on the other 3 corners of the intersection, development to the north, and Academy Sports that just opened today. He said it may not be the applicant's responsibility to do a more comprehensive traffic study. He said he believed it was the City's obligation to perform a much more in-depth, comprehensive study of the traffic to make sure the intersection is prepared before the development goes in to protect the residents of Fox Ridge and the 2,100 students at Maize South School. He said a light at the school road intersection doesn't do the residents of Fox Ridge much good. He requested that the Planning Commission not approve the zoning change request until the major shortcomings have been addressed. He commented on the full access traffic signals onto Maize Road and 29th Streets and how difficult it is to make a left at either location. He said taking the path of least resistance, the first two rights (after taking the right onto Maize Road) would be Westlakes Parkway which cuts through the Fox Ridge neighborhood and 34th Street where the school is located.

BRENDA SCRIPSICK, 9821 WESTLAKES COURT said she can see the proposed Sam's location from her front porch. She thanked the Planning Commission and staff for their support in helping the neighbors navigate the process. She said her friends and neighbors have many objections. She said their concerns are the same as the Planning Commission and that is what do they want economic development to be in the City of Wichita. She said the 400 plus neighbors invested in their homes because they wanted to invest in Wichita. She said they saw the 2030 plan which showed local commercial for this area as a cohesive extension to Fox Ridge. She said what is being proposed is against that plan. She said as a resident, she does not feel that the applicant has met the request of the Planning Commission nor worked effectively with the community in good faith. She said they have talked with several realtors that indicated that their property values will significantly decrease. She mentioned traffic and the additional truck traffic associated with a big box will only compound the problem. She mentioned how the neighborhood uses the sidewalks and how safety is a primary concern. She said one of the selling points for her home was the walking and jogging paths. She now has extreme concern with the increased traffic that will occur. She also voiced concern that the traffic study provided by the applicant is inaccurate. She said the neighbors have demonstrated how the big box will not be able to meet the City's own Code for noise and that the noise abatement proposed will not be successful. She said the trucks and forklifts needed to support this project are unacceptable. She said the environmental impact on the residents and City is far too aggressive at this location. She asked what they want the City to become and asked if it was a City to be sold to the highest bidder with little regard of transition from business to homes or is it going to be a balanced community where homes and businesses exist together in a way that is safe and appealing to look at; a city where people want to come and invest or leave. She said over the decades she has seen a great deal of effort by the Planning Commission to transform Wichita from a town of disorganized development into a show place, metropolitan mid-western city. She said they applaud the efforts of the Planning Commission to maintain the character of neighborhoods as development moves in. She said this big box does not belong in this area in any way. She said the people of the community ask the Planning Commission to deny this request.

SCOTT BENDER, 3109 N. RED FOX STREET, PRESIDENT, FOX RIDGE HOMEOWNERS ASSOCIATION said the covenants in their neighborhood set the standard high for the neighborhood.

He said they asked if the Planning Commission feels LC zoning is appropriate for this area, that they set covenants on the development to protect the homeowners. He said Fox Ridge is defenseless and can no longer protect itself from new neighbors. He said they felt the covenants should provide as a minimum 1) adequate buffering and screening to protect the quality of life, and 2) provide consistent architectural design so that the current and all future developments match the upscale characteristics of the Fox Ridge neighborhood. He said unlike the Moorings and Harbor Isle, they do not have a 1,800-foot buffer but 200 feet. He said they gave the Planning Commission a list dated September 20, of what they felt were minimum requirements for the development to fit into the neighborhood, which is in the application packet. He said the applicant has moved on some items but have not addressed all the issues in the letter. He said just because all points are not discussed today does not mean issues were perfectly resolved but only important issues were mentioned because of time constraints. He highlighted the following - site and traffic plans including a site plan for all parcels. He said they feel the applicant should provide a more robust site plan for the CUP. He said they understand that is not how the process typically works; however, they believe it is warranted in this case. He said the intensity of the development makes planning, negotiation, screening nearly impossible to address at this point. He said since the CUP allows for more intensity than the applicant is currently requesting he said they ask that the Commission limit the intensity or have the zoning approval contingent on providing a fuller site plan assuming maximum intensity allowed by the CUP. He said the Planning Commission is the neighbors' last backstop to this inconsistency. He said if the development were located 1,800 feet from their homes, the inconsistency would be much less important than 200 feet. He said as far as buffering and screening they requested 120-foot reserves along all property lines with 15-foot berms and other requirements needed to buffer sound and other activity adequately. He said that was a significant concern and request. He said the applicant provided the requested reserves with smaller berms along and north and northeast property lines. He mentioned the third row of deciduous trees which was new information to him. He said they believe the berms need to be higher and that 3-4 rows of trees are required to buffer noise and activity. He suggested combining the applicant's berms with the Fox Ridge berms to combine the height and reduce security and other maintenance risks associated with dealing with 2 separate berms. He said the HOA has offered to maintain the berms if the applicant will fund it through a trust or other arrangement because the association already knows how to manage landscaping. He said they want to insure that the berms are maintained to Fox Ridge standards. He said they are currently in the process of drafting a legal agreement that will indemnify the applicant if they deed the property over to the HOA. He said if this happened, they would remove their objection to the smaller 60-foot berm to the north.

MOTION: To allow the speaker 2 more minutes of speaking time.

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

BENDER mentioned hours of operation and limiting the delivery of semi-trailers from 8:00 a.m. to 8:00 p.m. He said they would like to limit deliveries on Parcel 1 and Parcel 7 or anywhere within 300 feet of residential to no more than 20% of the total deliveries. He said although some of the requests may seem significant or overwhelming, it is important to remember that the homeowners were in place first and have no additional mechanism to protect their investments. He said good covenants are the way to insure good neighbors. He said all they ask is that the applicant be a good neighbor.

ALDRICH asked if the berms are increased in height, would he support the application.

BENDER responded that 18-foot berms will increase protection of the neighborhood as a whole. He said if the berms were raised to 18-foot, the HOA Board would not object to the application.

STEVE WATKINS, 3122 N. RED FOX said he wanted to talk about the architectural design features proposed for the development. He said it was significant that from a Google search none of the Sam's Clubs are located within 300 feet of an upscale covenant-based housing subdivision such as Fox Ridge. He said they are not asking the applicant to do anything more than what they have done at other sites throughout the county. He said the following slides will show examples of what Sam's can do if they have a mind to. He said the "cookie cutter" Sam's proposed is not in keeping with the design of the upscale Fox Ridge development. He said concrete block and stucco, even when painted in earth tones, does not blend with the neighborhood. He said there are many examples where Sam's has gone beyond this and done nice architectural features with brick and natural stone facades on all sides such as Peachtree, GA; Kansas City; Florida; Lincoln, NA; Franklin, TN; Arkansas; Chandler, AZ (with other retail following the standard set by the big box). He mentioned that they were told the loading docks could not be moved; however, he referred to a picture of a Sam's in Tennessee where the docks were located on the corner which would fit in with this location. He also showed a picture of a store with the docks on the side which would avoid the big trucks coming right behind the houses which are only about 200-300 feet away from where those trucks are going to be at this location. He briefly reviewed several slides of the Fox Ridge neighborhood. He said they don't understand why the applicant can't go beyond the minimum architecturally and do what they are doing in other areas of the country. He said if they could at least do a more upscale façade it would be in keeping with Fox Ridge. He said they don't understand why they keep being told that the loading bays cannot be moved from this intrusive location when many examples can be found. He said locating the loading bays and access road where the trucks will come in closest to the existing residential property is just unacceptable. He said they ask that the Planning Commission place these expectations on the applicant.

FOSTER stated that he needed to leave for an out-of-town meeting. He said the applicant has done a good effort to meet some of the concerns of the neighbors; however, he said it appears that the traffic study is incomplete, the issue of transitional zoning is very critical on Parcel 7, the concept of increasing berm size needs to be addressed, and condition #15 related to the architecture is also critical. He said if this is to be a regional commercial center then it needs to be more like development in Hampton Lakes to the north, New Market Square and Bradley Fair in terms of the façade. He particularly mentioned the roof articulation. He said if he were able to stay, he would make a motion to defer the application until the issues are addressed.

FOSTER out @3:30 p.m.

GREG ALLISON, RESIDENT OF FOX RIDGE AND DESIGN ENGINEER FOR THE FOX RIDGE DEVELOPMENT said he has reviewed the drainage report which he believes is headed in the right direction. He said he knows the applicant will meet city guidelines. He said he does not believe they understand the drainage basin in the area and have not fully addressed compensatory storage. He said they haven't addressed the volume and pipe size and the detention required for the development. He said he knows these issues will be addressed, but he mentioned it because he believes the drainage basins are undersized by 2 to 3 times (volume), depending on how it is handled. He said the traffic report does underestimate the building square footage. He said a CUP is planned as a unit and not subdivide it into other units later; therefore, decisions on Parcel 7 are being made today and not intended to be put off into the future. He asked the Commission to address level F service (which indicates failure) on Parcel 7 at this meeting. He said the traffic report only addresses Parcels 1 through 6 as

being developed right now; however, there is no specific order on how the parcels will be developed so the Commission needs to consider that. He said the traffic study also says that in 2014 it will operate at a level D, which is a sub-standard level. He said not planning out for 20 years, which is a typical way to plan for traffic, is inappropriate. He said their driveways will affect traffic in the future along Maize Road and 29th Street. He said the site plan will change if the drainage expands and the traffic changes. He said it adds to the uncertainty of the neighbors if there is a not a realistic site plan.

BRIAN WILHITE, 3233 N. FLAT CREEK said the 18-foot berm is not an acceptable height to the majority of the homeowners. He said the residents have not been involved in the development of ideas to co-exist with the Sam's Store and their representatives have not been interested in working with the residents. He said in addition to maximizing the reserve areas within the CUP, the residents are interested in the idea of moving the building within the CUP. He referred to his residence located outside the northeast quadrant of the CUP and mentioned that when people are in the pool located 300 feet away from his deck, he can hear their conversations. He said these are factors that are not being considered. He said he purchased his home a little over a year ago and like many of the residents present at this meeting, he followed the 2030 Comprehensive Plan and put trust in it that it would be upheld. He said if he had known that 1½ years ago, he and his wife would have continued looking for somewhere else to live, a nice, safe place to raise their family. He closed by requesting that the Planning Commission deny the rezoning request.

ALDRICH asked didn't the HOA president represent the HOA at meetings with the applicant. He said the applicant can't realistically meet individually with each homeowner.

WILHITE said yes; however, he added that residents felt they needed more of a say on the application. He said there was no communication between the applicant and the residents as a whole. He said the homeowners are against the rezoning period.

JACK QUEEN, 3230 N. FLAT CREEK, VICE PRESIDENT, FOX RIDGE HOMEOWNERS ASSOCIATION said he agreed with both points of view on the issue represented by the HOA and the residents. He said there are the homeowners who are adamantly opposed to the proposed developed and want the City to follow the 2030 plan and establish local commercial at the site. He said the HOA took the position that if the neighborhood has to have the rezoning, there are certain items they want included in the development plan. He said this issue is very emotional and added that the majority of the residents present paid over \$300,000 for their homes. He said a development such as is being proposed will more than likely reduce the value of their homes, which is their largest investment. He said the HOA Board was trying to get as much separation from the residents as possible to reduce the effect on the residents' lifestyle and devaluation of their properties. He mentioned the loading dock height being reduced; however, he added that a 12-foot block is not going to reduce the noise much. He mentioned the total acreage of the development being reduced from 38 to 29 acres, but reminded that Commission that there is still 500,000 square feet of development so close to a residential neighborhood. He referred to a picture of the proposed berm and the wrought iron fence which will connect to the masonry fence owned by the HOA. He mentioned the berm and fence proposed on Parcel 7 said he would like to see a uniform, seamless transition between the 2 berms. He said an 18-foot berm would be preferred over the proposed 15-foot berm.

MOTION: To allow the speaker 1 more minute of speaking time.

SHEETS moved, **G. SHERMAN** seconded the motion, and it carried (11-0).

QUEEN asked staff why the 300-foot restriction for the drive-thru.

LONGNECKER responded to increase the distance between the drive-thru and abutting single-family residential development.

QUEEN said the issue of the noise and the traffic goes back to having the loading dock right next to the residences back doors, patios, and bedrooms. He asked if a drive-thru has to be 300 feet away from residential, why can't the loading dock with the semi trucks and other noise occurring all day be moved further away from the residences. He said he appreciated all the hard work that has been put into reviewing the application. He asked that before the Commission votes to please weigh the operation and ask themselves if their home was backed up to the proposed development, what their vote would be.

ALDRICH commented that he was just trying to ascertain what different groups the agent or applicant had to deal with. He said he assumed the HOA President represented the homeowners.

QUEEN said one group of residents hopes the Commission will deny the rezoning request today and the other group feels if they have to live with the proposal certain standards need to be established.

KENNY KALB, 9909 W. WESTLAKES COURT said his residence is located directly behind the proposed loading dock. He said they purchased their home 6 days before the announcement of this development. He said he was pro-business because he owns his own small business; however, he was not pro on how the applicant wants to develop this site. He mentioned the idea of increasing the berms from 15 to 18 feet, which he said he did not know if that would be enough, and commented that there was still not a "decision maker" representing Sam's at this meeting today who could make a determination on that request. He said there are other ways to do this development and mentioned detention ponds and reserves. He said he believes the Commission needs to carefully consider the restrictions they put on the development and do the right thing.

KREG GREENWOOD, 10520 W. 31ST ST. NORTH said his residence was located on the west side of Maize Road. He said most of the issues brought up at this meeting are the same concerns of the residents located on the west side of Maize Road including traffic and the dedicated turn lane from 29th to 37th Street. He mentioned entrance and exit lanes and said the applicant is going to do the minimum they have to do in order to get the proposal approved. He said there is only one way in and out for residents onto Maize Road. He said the traffic counts are inaccurate, especially during the time when school starts and lets out. He mentioned the tour of 20 Sam's locations in 3 states (Missouri, Oklahoma and Kansas) he took the Commission on at the September meeting. He said they have a "template" they follow for store development; however, they will change the template if they are asked to do so. He said part of the template is locating the sites on or within a quarter mile of highways. He said he was told a highway will be coming in to the north of the site; however, he said that could be another 10 -12 years; is 1 ½ miles away; and will run past 3 schools. He said it is 3 miles north to get to K-96 and 5 miles south to get to Kellogg. He said none of the regional traffic goes by any schools at the other 20 locations and asked if that was what Wichita really wanted to do. He asked why the City would want to create a regional draw that was 3 miles from a highway. He said what frustrates him the most is the intended consequences resulting from not "looking down the road" to the future. He said he knows there is no way to stop the development on Maize Road, but added that buffers need to be created such as churches and local commercial development. He said the depth, breadth and intensity of the

opposition to this proposal has created all of this. He said if this proposal was being located at Ridge Road and K-96, none of this conversation would be happening.

KEVIN GASKEY, 1316 GARDEN GROVE COURT, PLAIN OAK, TEXAS, KIMLEY-HORN & ASSOCIATES, ENGINEERING CONSULTANT FOR THE APPLICANT (SAM'S CLUB) said he would also like to thank staff and the homeowners for working with them on the proposal. He commented that there will be a transition from an 8-foot buffer to a 12-foot buffer between Parcel 7 and Parcel 9. He said after meeting with the homeowners on September 12, they developed a list of 13 priorities the homeowners requested including higher 15-foot berms, and moving the building 30 feet to the west (they have moved the building 80 feet to the west). He referred to the 10 items included in the letter from the HOA dated September 20 and said they believe they have accomplished the majority of those requests. However, he added, several of those requests they were not able to accommodate one of which was hours of delivery. He said they have eliminated the possibility of establishing multi-family residences on Parcel 7, which was another of the concerns expressed at the homeowners meeting. He said although the site contains 38.09 gross acres, usable acres on the site are approximately 29.4. He concluded by asking the Commission for approval of the proposed CUP.

ALDRICH asked if the applicant would be interested in consolidating the berms, raising the height of the berms to 18-foot, and changing the architectural design of the building to be compatible with the houses located in Fox Ridge.

GASKEY said the CUP contains language regarding combining the berms, but that will need to be worked out with the HOA and Sam's legal department. He referred to an aerial map of the site and mentioned stormwater, irrigation and landscaping that will need to be relocated. He said if they can get those issues worked out and Sam's agrees to it, they could do that. He said the berms were originally 6 feet high, but are now 15 feet. He said they do not know how tall the berms need to be but they are in lieu of the 6 to 8-foot high masonry wall required by City Code. He said City Code requires a 5-foot conifer on top of the berms; they have provided for 10-foot conifers. He said spacing on the conifers required by City Code is 40 feet; they have spaced the trees 20 feet. He said 15 feet is the minimum height of the the berms, but added that they will be scalloped on the top so some areas may be 16-17 feet. He said 8 feet is the minimum height on the northeast and 12 feet is the minimum on Reserve A.

AYSHA MOORE-ARROYO, SHADE O'QUINN ARCHITECTS, 211 N. RECORD STREET, DALLAS, TX said the CUP states that the final design of the building will need to be approved by the Planning Director. She said they have responded to the comments they have received and provided additional articulation and breaking of the walls. She said they would have to have additional discussion with Planning Staff and Sam's on the redesign issue. She said they would have to find out exactly what "compatible with Fox Ridge" means in terms of materials, etc., along with approval of Planning Staff and Sam's.

SHEETS clarified that there can be no idling trucks within 400 feet of residential areas.

GASKEY said yes, and added that Sam's has a "no idling" policy.

SHEETS also asked about raising the loading dock wall to 14 feet.

GASKEY said it was discussed; however, there was a structural issue.

MOORE-ARROYO said they would need to work that out with the structural engineer as to the implications of adding an additional 2 feet to the wall. She said the wall may have to be thicker which may jut into the fire lane.

SHEETS mentioned the architecture and referred to the stone used at the Fayetteville, Arkansas, location being a solution. He also mentioned as far as the drainage was concerned, the site was still subject to platting where drainage issues would be addressed.

MCKAY mentioned concerns about traffic and said he would be more comfortable if there was a stop light at 29th and Maize and between Parcel 7 and Parcel 1. He asked if the applicant would consider installing those 2 traffic lights.

GASKEY said the location at 29th and Maize was not on Sam's property so he believed the City would have to respond to that request. He said they could not even petition for the other traffic signal without warrants.

PAUL GUNZELMAN, CITY TRAFFIC ENGINEER stated that there currently was an existing traffic signal at 29th and Maize. He said as far as the location at Parcel 7 and Parcel 1, since they are private drives, it is up to the developer to pay for the signals.

G. SHERMAN asked Mr. Gunzelman to clarify the traffic report.

GUNZELMAN said the report accounted for traffic for the Sam's Club, proposed gasoline station, high turnover restaurant, 2 fast food restaurants, the specialty retail center and a 100,000 square-foot shopping center on Parcel 7.

DENNIS mentioned development of New Market Square at 21st and Maize and how the roads needed to be restructured and asked if this development would create the same type of traffic bottleneck.

GUNZELMAN said the traffic report at 21st and Maize indicated 400 vehicles southbound turning left and 500 westbound vehicles turning right. He said there were no heavy left turn indications in that report. He said this report indicates 155 southbound left turns at 29th and Maize during peak hours, which is within the single-left turn lane.

DENNIS clarified then in 2 years after the store is open, the City won't be in the same position as with 21st and Maize.

GUNZELMAN responded with the traffic projections provided in the traffic study that is correct.

FARNEY clarified that the City cannot compel the applicant to put a signal at Parcel 7 and Parcel 1 until traffic counts warrant it.

GUNZELMAN said the City can get a petition for a future signal when traffic volumes are met. He said level of service impacted is the left turn from the drive.

DENNIS asked Mr. Gaskey if he was a decision maker for the applicant.

GASKEY said that depended on what the question was.

DENNIS said if the Commission votes to approve the application with conditions on berms, wall height, changes in delivery times and trash pickup and further restrictions on Parcel 7 could he say whether or not the applicant would agree to them.

GASKEY said he could not respond to delivery hours, but he could respond to height of the berms.

JEFF RYAN, SAM'S CLUB, 3902 SOUTHWEST RIDGEWAY STREET, BENTONVILLE, AR commented that he represented Sam's interests in the State of Kansas. He said this was a multi-million dollar project. He said if walls or other items are moved, it changes everything on the whole plat which needs to be looked at by Sam's engineers, architects, legal department, construction manager's and home office, etc. He said although they may not be able to provide specific answers they can get back with an answer reasonably soon. He said they have listened to everyone's concerns and they have addressed those concerns.

DENNIS commented that the applicant was requesting that the Planning Commission make a decision today; however, the Commission may want to put stipulations on any decision. He asked how they can make a motion without knowing if the applicant will agree.

RYAN said they have been working with City Planning Staff on the stipulations they thought would be addressed at today's meeting.

MITCHELL commented that a claim has been made that this application is not in compliance with the Comprehensive Plan. He said although the Plan is out of date, he has not been able to differentiate between commercial ventures, retail, normal commercial ventures and regional commercial operations. He said there is a vast difference on the impact those ventures make. He said he believes this is the wrong location for a Sam's. He referenced the information provided on the locations of Sam's in other states. He said he believes there are better locations in this area of Wichita for a regional draw store of this kind. He said he does not know why they need 39 acres to develop the store and feels they are developing something to "patch in" to pay for their investment in the land at this location. He said he cannot support the application.

G. SHERMAN commented that this is one of the toughest cases he has every heard as a Planning Commissioner. He said it is made tougher by the fact that he believes representatives from Sam's have done a good job of listening to the neighbors' concerns. He mentioned the expression that was brought up at the last meeting "trying to fit a square peg into a round hole" and said he thinks a regional draw does not belong at this intersection. He said he applauds the applicant's efforts and said maybe they can get the proposal where it needs to be.

WARREN said sometimes people make things more complicated than they need to be. He said a store is a store whether it is called regional, local or mom and pop depending on how big it is and how much traffic it has. He said he believes the plan the applicant has come up with addresses concerns such as safety and traffic and they have listened to the neighborhood and gone way beyond what the Commission would expect with berms and separations. He mentioned that while on the Derby City Council he voted to approve the water park, even though his home backed up to the property. He said the noise from the park is not as bad as traffic on the interstate and a train track that is 1½ miles away. He said when you live in a City, City's have noise. He said he would like to see an upscale façade at the location.

MOTION: To approve subject to staff recommendation.

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

MILLER commented that regarding the architectural compatibility, staff provided the standard language about sharing uniform architectural character, color and texture so if the Commission is looking for something else such as brick or masonry or referencing the facades from one of the other Sam's stores staff would appreciate any direction.

DENNIS said he would prefer that the motion included reference to a more upscale façade and a 14-foot wall by the loading dock if the motion maker is interested in amending his motion.

WARREN said he would be open to amendments and additions to the motion.

JOHNSON said he agreed with including the condition of the upscale façade; however, he said he would prefer a taller berm (18 feet) rather than a taller wall at the loading dock.

SHEETS requested that there be some type of stone on the front façade that would tie into the design of the residential area such as was used at the Fayetteville, Arkansas, Sam's.

LONGNECKER mentioned that there are pictures which give clear examples of stone facades at Sam's in Lincoln, Nebraska and Fayetteville, Arkansas.

WATKINS said they would prefer the brick and stone on all sides, not just the front façade.

WARREN said with an 18-foot berm the residents will not see the rear façade.

WATKINS disagreed.

SHEETS referenced the Sam's at Fayetteville, Arkansas, and asked that the front façade be similar.

WARREN agreed to amend the motion to include the comment about the front façade and the addition of 15-foot berm along the east wall.

MILLER STEVENS said there has been a lot of discussion and compromise; however, she feels more could have been done. She said she is not interested in designing a Sam's today.

SUBSTITUTE MOTION: To deny the application.

MILLER STEVENS moved, **MITCHELL** seconded the motion and it failed (2-8).
ALDRICH, DENNIS, FARNEY, JOHNSON, MCKAY, SHEETS, G. SHERMAN
and **WARREN** – No.

DIRECTOR SCHLEGEL asked if there was a condition for a petition when a traffic light was warranted in the Staff Report.

LONGNECKER responded no; however, he said that could be added as a condition. In addition, he mentioned that the petition for the signals can be presented during the platting process.

GASKEY requested clarification that the minimum height of the berm went from 15 feet to 18 feet. He requested that the motion be amended to say a minimum of 15 feet up to 18 feet in height.

There was further discussion regarding the height of the berms.

DENNIS said he agreed with Commissioner Miller Stevens; the Commission should not be designing a Sam's club at today's meeting; that is not their job. He said he is disappointed in the process and thought this would have gone a lot smoother if Sam's had brought a representative who could have made some decisions to the meeting with the homeowners in October.

G. SHERMAN asked about the possibility of deferring the application for a few weeks. He commented that the homeowners themselves are in disagreement.

MILLER STEVENS commented that the homeowners do not want this zone change. She said the homeowners association commented "if they have to" as a proviso. She said the neighbors see this as not compatible with the neighborhood that they have developed, built and bought into. She said she feels the Commission has lost sight of what they need to do, which is evaluate if the zoning that has been requested is appropriate for this neighborhood.

DENNIS clarified amendments to the motion as follows: to add a petition that the applicant pay for the traffic signal when it is warranted; the addition of an upscale façade like, Franklin, Tennessee, or Fayetteville, Arkansas; and a minimum of 15-foot undulating berms. He asked if the berms were all the way around the site.

WARREN said he would be willing to amend the motion to require 16-foot berms with 18-foot maximums.

SHEETS agreed with the amendment on the berms.

THE ORIGINAL MOTION, as amended, carried (7-3). **MILLER STEVENS, MITCHELL and G. SHERMAN** – No.

-
5. **Case No.: CUP2012-00030** - (Deferred from the 10/18/2012 MAPC Meeting) – Maize 21 LLC, c/o Ted Timsah (owner) Let's Paint LLC, c/o Melodee Schaffer (applicant) and Triplett, Wolf & Garretson, LLC (agent) – request to amend the LC Limited Commercial zoned CUP DP-197 to allow a drinking establishment on Parcel 3 on property described as:

Lots 13 and 14, Block 1, Timber Ridge 2nd Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The LC Limited Commercial ("LC") zoned site, Parcel #3, is located within the LC zoned DP-197, the Greystone Community Unit Plan ("CUP"). DP-197 is located south of 21st Street North on the east side of Maize Road. The applicant is requesting amendment #2 to DP-197 to allow the on-site sale and consumption of alcoholic liquor or cereal malt beverage ("tavern and drinking establishment") in association with her painting classes ("personal improvement service", art classes/studio); the Wichita-Sedgwick County Unified Zoning Code (UZC), Sec.II-B.10.i and 13.b. The UZC permits taverns and drinking establishments in the LC zoning district, but requires a Conditional Use when located within 300 feet of "church or a place of worship," public park, "school," or residential

zoning; UZC, Sec.III-D.w. The site is adjacent to SF-5 Single-Family Residential (“SF-5”) zoned single-family residential neighborhoods and within 100 feet of a SF-5 zoned church. An amendment to the CUP substitutes for the required Conditional Use. The UZC permits personal improvement service by right in the LC zoning district. Parcel #3 permits “retail uses, liquor stores, financial institutions, restaurants (except drive up or drive through on the south half of the parcel) and offices.” Per these listed uses an amendment is also needed to allow the art classes/studio.

The applicant’s web site, www.letspaintwichita.com (see exhibit), provides a monthly calendar (and the time) of painting classes an individual or group can register for. The web site also recommends registering for the painting classes in advance because of limited seating, as well as registration information on private events, kids’ parties and family days, with all of these events being part of the painting classes. Only those people registered for the painting classes can buy and drink alcoholic liquor or cereal malt beverages at the art studio.

The site is located in Parcel #3 of the LC zoned 12.52-acre CUP DP-197; approved August 28, 1990. Parcel #3 has Maize Road frontage and is developed as a small commercial strip center, with seven store fronts. Two of the strip’s store fronts are vacant, with the other five having: a clothing store, a nail salon, a pizza restaurant, a travel and motoring store and a financial services office. The rest of DP-197 is developed with: a stand-alone fast food restaurant, a stand- alone bank and small commercial strip centers containing various fast food/sandwich shops, office and retail. The uses permitted on DP-197’s largest parcel, Parcel #1, was recently amended (CUP2011-00031) to allow multi-family residential development; an apartment complex is currently under construction.

Parcel #1’s allowed uses include private clubs. In 1990 the Wichita Zoning Ordinance applied the same regulations on private clubs, taverns and drinking establishments. The current UZC classifies a private club as either a “Class A” club (“...nonprofit social, fraternal, or war veterans club...”) or a “Class B” club (“...premises operated for profit...”); UZC Sec II-B, 3.f & g. The current UZC applies the same regulations on Class A and B clubs as on taverns, drinking establishments and night clubs in the city. The applicant’s proposed use, an art school/studio with a tavern/drinking establishment on Parcel 3, is consistent with DP-197’s allowing private clubs in Parcel 1.

The site is the south most portion of mostly LC and some GC General Commercial (“GC”) zoned commercial development on both sides of Maize Road, stretching from the south side of 21st Street North to 29th Street North. This commercial zoning and development is beginning to insert itself up to 37th Street North. Most of these LC and GC zoned developments are covered with PO Protective Overlays (“PO”) or CUPs. The closest LC and GC zoned development located north of the site, includes (but not limited to) a Dillon’s super grocery store, a Wal-Mart, fast food restaurants, a car wash, a pharmacy, banks, commercial strips housing retail and office and a portion of a SF-5 zoned single-family neighborhood. There are also multiple DER (Drinking-Eating-Restaurant) restaurants in this area located north of the site. A DER limits its liquor sales to 50% or less of the total sales. The LC and GC (including a CUP) zoned development located west of the site, across Maize Road, includes (but not limited to) a gymnastic school, self storage, a cell tower, a stand-alone bank, a fast food restaurant with a drive thru, a nursery and a furniture store. South of the site (across 20th Street North), along both sides of Maize Road, are extensive SF-5 zoned single family neighborhoods and at least three SF-5 zoned churches, one of which was recently approved for a day care; CON2012-27. There are also two small NO Neighborhood Office (“NO”) sites located south of the site. East of the site and its CUP there is GO General Office (“GO”) zoned offices and a SF-5 zoned single family neighborhood.

Currently there are no taverns, drinking establishments or night clubs in this area, thus if the application is approved it would be the first tavern/drinking establishment (or night club) in this area. The nearest tavern, drinking establishment or night club appears to be located a mile east of the site, off of Tyler Road and 21st Street North; CON2012-21.

CASE HISTORY: The site is part of the Timber Ridge 4th Addition, which was recorded with the Register of Deeds April 22, 1997. The site is also part of DP-197 the Greystone Community Unit Plan, which was approved August 28, 1990. The application, if approved, would be the second amendment to DP-197. Staff has received a letter from a church protesting the request. Staff has also received calls wanting more information about the proposed use. This case was deferred from the October 18, 2012, MAPC meeting.

ADJACENT ZONING AND LAND USE:

NORTH: LC, GC	Big box retail, car wash, banks, big box grocery store, commercial strips, fast food restaurants, DER restaurants, pharmacy
SOUTH: SF-5, NO	Single-family neighborhoods, churches, small offices
EAST: LC, GO, SF-5	Rest of DP-197, offices, single-family neighborhoods
WEST: LC, GC	gymnastic gym, self storage, a cell tower, a bank, fast food restaurant, nursery, furniture store, cell tower

PUBLIC SERVICES: The site has direct access onto Maize Road, a four-lane arterial street with a center turn lane and decal lanes. The Maize Road 21st Street North intersection has recently had improvements made to it. All municipal services are available.

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 LC zoning as being generally compatible with the Plan’s local commercial category.

As stated in the background, the UZC permits taverns and drinking establishments in the LC zoning district, but requires a Conditional Use when located within 300 feet of “church or a place of worship,” public park, “school,” or residential zoning; UZC, Sec.III-D.w. The site is adjacent to SF-5 Single-Family Residential (“SF-5”) zoned single-family residential neighborhoods and within 100 feet of a SF-5 zoned church. An amendment to the CUP substitutes for the required Conditional Use. The UZC permits personal improvement service by right in the LC zoning district. Parcel #3 permits ‘retail uses, liquor stores, financial institutions, restaurants (except drive up or drive through on the south half of the parcel) and offices.’ Per these listed uses an amendment is also needed to allow the art classes/studio.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed art studio-tavern/drinking establishment is located on the south end of an existing commercial development, DP-197, with direct access onto the arterial road, 21st Street North. Existing commercial buildings are adjacent to its north, west and east sides. A SF-5 zoned single-family residential neighborhood is located south of the site, across the residential street 20th Street North. This residential street serves as the only space between the proposed art studio- tavern/drinking establishment and neighborhood.

The Comprehensive Plan Objective II.B. is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” There are no taverns, drinking establishments or night clubs in this area, thus if the application is approved it would be the first tavern, drinking establishment or night club in this area. However, there are numerous DER’s in this area along Maize Road. Most of the concerns with taverns, drinking establishments or night clubs are related to the intoxication of their patrons and this impact on its neighbors. The site’s relative small size (1,543-square feet) will limit the number of the people using the art studio-tavern/drinking establishment. Limiting the sale and consumption of alcoholic liquor or cereal malt beverages on the premises to those registered for the painting classes, may lessen the possible negative impact on the neighborhood. Enforcement of any restrictions may fall outside the hours and days of the City’s Code Enforcement division, which leaves the Police Department as the group that may get the call for enforcement. The Police Department does not operate under the same codes as Code Enforcement.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request for a tavern/drinking establishment be APPROVED with the following amendment to the provisions of Parcel #3:

- (1) Allow personal improvement service, specifically an art school/studio.
- (2) The sale and consumption of alcoholic liquor or cereal malt beverages on the premises shall be limited to those registered for painting classes offered by the art school/studio. At such time that the painting classes are no longer offered, the sale and consumption of alcoholic liquor or cereal malt beverages on the premises shall no longer be allowed, unless approved by an amendment to CUP DP-197.
- (3) The sale and consumption of alcoholic liquor or cereal malt beverages associated with those registered for painting classes offered by the art school/studio shall be confined to the approximately 1,543-square-foot facility as shown on the approved site plan. No outside loudspeakers or activities
- (4) If the Zoning Administrator finds that there is a violation of any of the provisions of this amendment, the Zoning Administrator may, with the concurrence of the Planning Director, declare the amendment null and void.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood: As stated in the background, this portion of Maize Road, from 21st Street North to 29th Street North, is almost entirely stripped out with LC and some GC zoned big box retail, commercial strips, fast food restaurants, DER restaurants. The exceptions to this commercial zoning and development are a portion of the SF-5 zoned Chadsworth single-family residential neighborhood backing into the east side of Maize Road and the SF-20 zoned southeast corner of 21st and Maize. The Chadsworth neighborhood is located mid-mile and the SF-20 zoned farmstead is a remnant of Cadillac Lake and is mostly FEMA Flood Zone. This portion of Maize Road, from 21st to 29th may have the most commercial zoning and development of any north – south arterial in west Wichita and Sedgwick County.

The suitability of the subject property for the uses to which it has been restricted: The site is a part of a commercial strip located in Parcel 3 of the LC zoned CUP DP-197. Parcel #3 permits ‘retail uses, liquor stores, financial institutions, restaurants (except drive up or drive through on the south half of the parcel) and offices.’ Development on Parcel 3’s commercial strip reflects those permitted uses; a clothing store, a nail salon, a carry out pizza restaurant, a travel and motoring store

and a financial services office. Two of the strip's store fronts are vacant. The restrictions placed on Parcel 3 are suitable for its proximity to the SF-5 zoned neighborhoods, located south of it. Even so the restrictions do not prohibit retail uses, which present what may be the widest range of development possibilities in the UZC. The site's LC zoning coupled with DP-197's Parcel 1 being permitted 'private clubs' presents another development consideration, which is what the applicant requests.

- (2) Extent to which removal of the restrictions will detrimentally affect nearby property: There are no taverns, drinking establishments or night clubs in this area, thus if the application is approved it would be the first tavern/drinking establishment in this area. However, there are numerous DER's in this area along Maize Road. Most of the concerns with taverns/drinking establishments are related to the intoxication of their patrons and this impact on its neighbors. The site's relative small size (1,543-square feet) will limit the number of the people using the art studio- tavern/drinking establishment. Limiting the sale and consumption of alcoholic liquor or cereal malt beverages on the premises to those registered for the painting classes, may lessen the possible negative impact on the neighborhood. Enforcement of any restrictions may fall outside the hours and days of the City's Code Enforcement division, which leaves the Police Department as the group that may get the call for enforcement. The Police Department does not operate under the same codes as Code Enforcement.
- (3) 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 LC zoning as being generally compatible with the Plan's local commercial category.

The UZC permits personal improvement service by right in the LC zoning district. The UZC permits taverns and drinking establishments in the LC zoning district, but requires a Conditional Use (the amendment to the CUP serves as the Conditional Use) when located within 300 feet of "church or a place of worship," public park, "school," or residential zoning: UZC, Sec.III-D.w. The site is adjacent to SF-5 Single-Family Residential ("SF-5") zoned single-family residential neighborhoods and within 100 feet of a SF-5 zoned church. Parcel #3 permits 'retail uses, liquor stores, financial institutions, restaurants (except drive up or drive through on the south half of the parcel) and offices.' Per these listed uses an amendment is also needed to allow the art school/studio.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed art studio-tavern/drinking establishment is located on the south end of an existing commercial development, DP-197, with direct access onto the arterial road, 21st Street North. Existing commercial buildings are adjacent to its north, west and east sides. A SF-5 zoned single-family residential neighborhood is located south of the site, across the residential street 20th Street North. This residential street serves as the only space between the proposed art studio- tavern/drinking establishment and neighborhood.

- (4) Impact of the proposed development on community facilities: None identified.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **ALDRICH** seconded the motion, and it carried (10-0).

6. **Case No.: ZON2012-00028/CUP2012-00031** – USD 259 (owner), Occidental Management (applicant), KE Miller Engineering, P.A., c/o Kirk Miller (agent) request a City Commercial Community Plan (CUP) to create the Tyler Pointe Commercial CUP and City zone change from SF-5 Single-family Residential to LC Limited Commercial on property described as:

Beginning at the Northwesterly most corner of Lot 1, Northwest High School Addition to Wichita, Sedgwick County Kansas; thence S 00°00'00" W, along the Westerly Line of described lot, a distance of 176.15 feet; thence continuing Southerly along said Line, a distance of 103.08 feet; thence S 00°00'00" W, continuing Southerly along said Line, a distance of 942.36 feet; thence N 90°00'00" E, a distance of 142.77 feet; thence N 32°17'06" E, a distance of 387.29 feet; thence N 76°06'34" E, a distance of 149.57 feet; thence N 32°17'06" E, a distance of 285.06 feet; thence N 00°00'00" W, a distance of 117.94 feet; thence N 32°17'06" E, a distance of 221.73 feet; thence N 00°00'00" W, a distance of 219.05 feet; thence N 62°37'20" W, a distance of 266.73, to a point on the North Line of described lot; thence S 89°06'05" W, along said Line, a distance of 227.97 feet; thence continuing Westerly along said Line, a distance of 103.08 feet; thence S 89°06'05" W, continuing Westerly along said Line, a distance of 176.15, to Point of Beginning.

BACKGROUND: The applicant requests LC Limited Commercial ("LC") zoning subject to the development standards contained in the proposed Tyler Pointe Commercial Community Unit Plan ("CUP") DP-329. The 15.5 acre site is zoned SF-5 Single-family Residential ("SF-5"), and is currently open space contiguous with Northwest High School. The Wichita-Sedgwick County Unified Zoning Code ("UZC") requires a CUP for LC 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 organized commercial development to certain standards prescribed by the UZC.

The site is located at the southwest corner of 13th Street North and Tyler. The other three corners of this intersection are zoned LC, and the northwest and northeast corners are under CUPs DP 63 and DP 106. All three corners include typical retail/commercial and restaurant uses. The northwest corner includes a grocery store, the southwest corner includes multi-family development, and the northeast corner includes a medical office facility. Other surrounding zoning and land uses include multi-family zoned apartments, TF-3 Two-family Residential ("TF-3") zoned duplexes, a GO General Office ("GO") zoned hospital, an SF-5 zoned school, and SF-5 zoned single-family neighborhoods.

The CUP is broken into five Parcels. The applicant proposes the following LC uses on all parcels: Assisted Living; Church or Place of Worship; Convalescent Care Facility; Day Care; Library; Governmental Services; Hospital; Printing and Copying, Limited; College or University; Parks and Recreation; Animal Care, Limited; Automated Teller Machine (ATM); Bank or Financial Institution; Bed and Breakfast Inn; Broadcasting or Recording Studio; Convenience Store; Funeral Home; Medical

Service; Nurseries and Garden Centers; Office, General; Personal Care Service; Post Office; Recreation and Entertainment, Indoor; Restaurant with drive through; Retail, General and Monument Sales.

The site will require reconfiguration of an existing drainage feature to the southeast; the drainage easement will remain a part of the USD 259 property, but will function as a buffer between the commercial development and the remainder of the school site. The applicant proposes locating required screening and landscaping within this drainage easement, on the adjacent property owner's property, to be maintained by the applicant under a covenant agreement. Screening is proposed to be met with landscaping, berms and a wrought iron fence in lieu of the UZC required masonry wall. The MAPC has the discretion to waive the wall requirement provided that screening is achieved. The applicant indicates a 10-foot street dedication on both 13th and Tyler. The applicant indicates one full movement opening onto 13th Street North, one full movement opening and one right-in right-out opening onto Tyler. The City Traffic Engineer is in agreement with the applicant's proposed street dedications and access plan. The CUP calls for 24-foot fire lanes to be provided around all buildings. However, the CUP drawing indicates a 15-foot building setback along the southeast property line; the City Fire Marshal would like the building setback to reflect at a minimum the 24-foot fire lane.

The remainder of the CUP is consistent with most City CUPs and the UZC requirements regarding signage, landscape requirements, screening, cross-lot circulation, pedestrian circulation, architectural consistency, parking and lighting. The only other departures from UZC requirements are that all setbacks do not meet the UZC requirement for 35-foot setbacks within CUPs; and Parcel 1 calls for 35% maximum building coverage when the UZC limits CUPs to 30%. These UZC requirements are also waivable by the MAPC provided that the MAPC finds "specific reasons for such modification and an explanation of how such modification or waivers meets the criteria and purpose of this section" of the UZC.

CASE HISTORY: The site is located on Lot 1 of the Northwest High School Addition, platted in 1977.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Medical office, retail
SOUTH:	SF-5	Public high school
EAST:	SF-5	Public high school
WEST:	LC	Retail, multi-family residential

PUBLIC SERVICES: 13th and Tyler are both section line arterial streets at this location with four travel lanes and a central turn lane at the intersection. Westbound 13th Street also has a right turn lane at this intersection with northbound Tyler. 13th Street has a 50-foot half-width right-of-way at this location, tapering to 75 feet at the intersection. Tyler has a 40-foot half-width right-of-way at this location, tapering to 75 feet at the intersection. As previously noted, the CUP indicates a 10-foot dedication to both arterial streets. Additional traffic improvements will be considered at the time of platting. Current traffic counts on this portion of 13th Street North are 17,085 vehicles per day. Current traffic counts on this portion of Tyler are 23,413 vehicles per day. The proposed CUP could have a total of 218,667 commercial square feet. With the ITE Manual estimate of 42 cars per day trip generation per 1000 square feet of shopping center space, this CUP could generate an additional 9,156 vehicles per day to this intersection. All utilities are available to the site, and the CUP indicates that all utilities will be placed underground.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan designates the site as “Major Institutional,” reflecting current school district ownership. The other three corners of this intersection are designated as “Local Commercial.” This request meets the Commercial Locational Guidelines of the Comprehensive Plan in that it is at an arterial street intersection along with other commercial uses, it does not feed commercially generated traffic onto residential streets and it has site design features to mitigate impact on surrounding uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the proposed CUP and zone change be APPROVED, subject to replatting within one-year and the following conditions:

- A. The north and west boundary building setbacks shall be increased to 35 feet, in conformance to UZC standards.
- B. The southeast boundary building setback shall be increased to 24 feet, consistent with the fire lane requirement, and at the request of the Fire Marshal.
- C. General Provision 7 shall include: The applicant shall obtain a document in writing from the adjacent property owner agreeing to allow landscaping and screening to be placed on the adjacent property, and accepting the covenant to require the applicant’s maintenance of said landscaping and screening.
- D. 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:

1. The zoning, uses and character of the neighborhood: The SF-5 zoned site is located at the southwest corner of 13th Street North and Tyler on an existing high school site. The other three corners of this intersection are zoned LC, and the northwest and northeast corners are under CUPs DP 63 and DP 106. All three corners include typical retail/commercial and restaurant uses. The northwest corner includes a grocery store, the southwest corner includes multi-family development, and the northeast corner includes a medical office facility. Other surrounding zoning and land uses include multi-family zoned apartments, TF-3 zoned duplexes, a GO zoned hospital, and SF-5 zoned single-family neighborhoods.

2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned SF-5 and could be developed with additional school or institutional uses. The site could be developed with single-family residences; however, this arterial street intersection location is not conducive to low density residential development. Arterial street intersections are suitable for commercial development, as proposed by the applicant.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The LC zoning request and CUP will allow significantly more intense development on this site. Nearby property could be most affected by increased traffic to this site, and will be affected by increased light, noise, trash and other impacts of commercial development.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan designates the site as “Major Institutional,” reflecting current school district ownership. The other three corners of this

intersection are designated as “Local Commercial.” This request meets the Commercial Locational Guidelines of the Comprehensive Plan in that it is at an arterial street intersection along with other commercial uses, it does not feed commercially generated traffic onto residential streets and it has site design features to mitigate impact on surrounding uses. The CUP proposes waiving UZC requirement for a masonry wall, increasing the 30% coverage required by the UZC to 35%, and lowering the UZC building setback requirement of 35 feet to 15 and 20 feet.

5. Impact of the proposed development on community facilities: The project will generate increased traffic and demand for City services at this site. However, the Comprehensive Plan anticipates commercial development to occur at arterial intersections such as this location.

JESS MCNEELY, Planning Staff presented the Staff Report.

FOSTER noted a typographical error on page 3 and clarified setbacks as far as what the applicant was requesting (20-foot setbacks) and what staff was recommending (35-foot setbacks).

ALDRICH also requested clarification on setbacks.

MCNEELY said the applicant agreed that parcel one would have a 24-foot setback and that parcel two would have a 15-foot setback. He said the applicant agreed with the recommended setbacks under item B under conditions; however, they do agree with the setbacks recommended in item A. under conditions which were the 35-foot setbacks along the arterial streets.

KIRK MILLER, KIRK MILLER ENGINEERING, 516 S. MARKET, AGENT FOR THE APPLICANT said he would address setbacks and the applicant, Gary Oborny, would address other issues. He said they are requesting 20-foot setbacks with 10-foot dedications on both streets, which is what Traffic Engineering asked for. He said currently a 25-foot setback is platted with a 50-foot right-of-way, so the setback is 75 feet on both streets from the center line of the road. He said what they are proposing will make that 80 feet from the center line of the road. He said current planning trends are moving buildings closer to the street and not providing as much on-site parking. He said this location would be suited to pedestrian access due to its proximity to Northwest High School.

ALDRICH asked about sidewalks.

MILLER responded that there are sidewalks on both 13th and Tyler Streets that will remain. He said there will also be pedestrian access through the property.

GARY OBORNY, 13824 PINNACLE, APPLICANT said common development practices are to bring the buildings closer to streets. In addition, he added that “kiosks” or other convenience type shopping locations are becoming more common and it is important to have them closer to streets because they are smaller buildings.

ALDRICH clarified that the applicant agreed with all staff recommendations in the Staff Report with the exception of item A.

OBORNY responded yes. He added that what they are requesting was not uncommon and mentioned development projects in Bel Aire, Derby and Wichita (North Rock) where setbacks were adjusted.

FOSTER asked if Traffic Engineering had any concerns about the reduced setbacks.

PAUL GUNZELMAN, TRAFFIC ENGINEER stated that he had no concerns about the reduced setback.

MOTION: To approve subject to staff recommendation with the exception of item A that the setbacks be reduced from 35-feet to 20-feet.

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

-
- 7. **Case No.: ZON2012-00029** - PCOPD, LLC/Wadley Development, LLC request a City PO Amendment to PO-51 to permit Multi-family Residential development at the MF-29 density and to increase the maximum height to 45 feet for Multi-family buildings in GO General Office.

This item was withdrawn by the applicant.

NON-PUBLIC HEARING ITEMS

- 8. **Case No.: DER2012-00008** - Staff requests consideration of revisions to the Unified Zoning Code to transfer the authority of the City and County Boards of Zoning Appeals to the Metropolitan Area Planning Commission.

This item was deferred.

9. Other Matters/Adjournment

FARNEY asked staff if the board would have legal protection acting in the capacity of the Board of Zoning Appeals.

VANZANDT said the Commission is protected and there is not personal liability.

The Metropolitan Area Planning Commission adjourned at 4:45 p.m.

State of Kansas)
Sedgwick County) ^{SS}

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

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

John L. Schlegel, Secretary

(SEAL)

Wichita-Sedgwick County Metropolitan
Area Planning Commission