

METROPOLITAN AREA PLANNING COMMISSION

Minutes

March 21, 2013

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 21, 2013, 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; David Foster; Matt Goolsby; Bill Johnson; Don Klausmeyer; John W. McKay, Jr.; M.S. Mitchell; Debra Miller Stevens and Chuck Warren. Commission members absent were: Shawn Farney, Joe Johnson, Don Sherman and George Sherman. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney, Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. There were no meeting minutes for approval.

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

2-2. SUB2013-00009: One-Step Final Plat – MAKI ADDITION.

NOTE: This is unplatted property located in the County within three miles of the City of Wichita. It is in an area designated as “Wichita 2030 Urban Growth Area” by the Wichita-Sedgwick County Comprehensive Plan.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Metropolitan Area Building and Construction Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Butler County Rural Water District No. 5. If service is available, feasible and the property is eligible for service, the Metropolitan Area Building and Construction Department recommends connection.
- C. City of Wichita Public Works and Utilities Department requests a No Protest Agreement for future sewer service.
- D. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- E. County Public Works has approved the drainage plan for stormwater quantity. Stormwater quality evaluation will occur upon submittal of construction plans.
- F. County Surveying advises the water line easement must be shown with sufficient ties to locate it definitely with respect to the subdivision.

- G. County Public Works requests complete access control on 53rd Street North, and one opening per lot on 143rd Street East. The plat should specify the openings are “in accordance with the Wichita/Sedgwick County Access Management Standards.
- H. County Public Works requests additional right-of-way along both arterials. The Access Management Regulations requires a 60-foot half-street right-of-way width along rural arterials. The Regulations also require a 75-foot arterial intersection right-of-way and an additional 25-foot x 25-foot corner clip at the intersection. The plat’s text shall note the dedication of the streets to and for the use of the public. The rural water easements should be shown within the right-of-way.
- I. The spelling of “benchmark” needs corrected. “Stormwater” needs to be corrected.
- J. Sedgwick County Fire Department advises that the plat will need to comply with the Sedgwick County Service Drive Code.
- K. A block number or letter shall be denoted on the face of the plat, in addition to lot numbers.
- L. The lot lines should be denoted with bold lines.
- M. The plat’s text needs to reference “lots and a block.”
- N. The signature block for the Board of Commissioners Chairman should be revised to read underneath the signature line, “James B. Skelton, 5th District.”
- O. 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.)
- P. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- Q. 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.
- R. 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.
- S. 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.

- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- V. 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.

MITCHELL moved, **MCKAY** seconded the motion, and it carried (9-0).

2-3. SUB2013-00011: One-Step Final Plat – MACARTHUR EAST ADDITION.

NOTE: This is unplatted property located in the County within three miles of the City of Wichita. It is in an area designated as "Wichita 2030 Urban Growth Area" by the Wichita-Sedgwick County Comprehensive Plan.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve the site.
- 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. County Public Works has approved the drainage plan for stormwater quality and quantity.
- D. County Public Works has requested a 10-foot contingent dedication of right-of-way along Oliver to become effective upon removal of the building.
- E. County Public Works has approved the access controls with six openings along MacArthur and an emergency opening along Oliver.
- F. The street should be labeled as "MacArthur Rd."
- G. The spelling of "stormwater" needs corrected.

- H. 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.
- I. The site is located within the Maximum Mission Area of the Air Installation Compatible Use Zone (AICUZ) study to identify noise impact areas around McConnell Air Force Base. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- J. According to the platting binder, a blanket pipeline easement has been granted over this plat. The applicant shall either obtain a release of the easement or provide proof that the easement has been confined. If any portion of this easement is confined on this plat it shall be shown and the pipeline's name and recording information shown.
- K. The platator'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.
- L. 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.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. 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.
- O. 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.
- P. 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.

- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- S. 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.

KLAUSMEYER moved, **MCKAY** seconded the motion, and it carried (8-0-1).
JOHNSON – Abstained.

3. PUBLIC HEARING – VACATION ITEMS

- 3-1. VAC2013-00005: County request to vacate a portion of platted access control,** generally located on the east side of 183rd Street West, mid-mile between Maple Street and 4th Street North (Goddard Area of Zoning Influence).

APPLICANT/OWNER: James H. & Jacquelyn C. Stearns (owner)

LEGAL DESCRIPTION: Generally described as vacating that portion of platted complete access control beginning 170 – 220 feet north of the south lot line of Lot 10, Block A, Eck 6th Addition, to allow a drive from said lot's west lot line onto 183rd Street West, Sedgwick County, Kansas.

LOCATION: Generally located on the east side of 183rd Street West, mid-mile between Maple Street and 4th Street North (BoCC #III, Goddard Area of Zoning Influence)

REASON FOR REQUEST: Disconnect existing drive located on the south lot line

CURRENT ZONING: The site and all abutting adjacent properties are zoned RR Rural Residential ("RR").

The applicant proposes to shift the platted permitted access onto 183rd Street West from the south 15 feet of the west lot line of Lot 10, Block A, Eck 6th Addition to a point beginning 170 – 220 feet north of the south lot line of said lot. This would line the applicant's drive up with their garage. The proposed location would provide approximately 250 feet of separation from the nearest drive on the west side of 183rd and 600 feet of separation from the nearest drives north of the proposed drive. The applicant proposes to disconnect their portion of the joint drive they share with the abutting south property; platted shared access, 15 feet on each side of the common lot line of Lots 10 & 11, Block A, Eck 6th Addition. The applicant states that the abutting southern property's recently constructed accessory structure, located just south off of the split in the drives is a visual encroachment for them. There are no public utilities located in area of the vacation request. Comments from franchised utilities have not been

received and are needed to determine if they have utilities located within the area of the vacation. The Eck 6th Addition was recorded with the Register of Deeds November 1, 2000.

Because the site is located within the City of Goddard's Area of Zoning Influence, consideration and recommendation by their planning commission is required. The request will be heard at their March 14, 2013, meeting.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from County Public Works, 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 platted complete 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 February 28, 2013, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the described portion of the platted access control and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate that portion platted complete access control along the site's 183rd Street West's frontage, as approved by County Public Works. 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. All Provide to Planning prior to the case going to Council for final action.
- (2) As reviewed by Public Works, disconnect the portion of the shared drive on the subject site according to County Standards and at the applicant's expense.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (4) All improvements shall be according to County Standards and at the applicant's expense, including all required County permits, inspections and the construction of the drive onto 183rd.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required

documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate that portion platted complete access control along the site's 183rd Street West's frontage, as approved by County Public Works. 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. All Provide to Planning prior to the case going to Council for final action.
- (2) As reviewed by Public Works, disconnect the portion of the shared drive on the subject site according to County Standards and at the applicant's expense.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (4) All improvements shall be according to County Standards and at the applicant's expense, including all required County permits, inspections and the construction of the drive onto 183rd.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

JOHNSON moved, **FOSTER** seconded the motion, and it carried (9-0).

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- 3-2. **VAC2013-00006: City request to vacate a drainage easement dedicated by separate instrument,** generally located south of 13th Street North, on the west side of Webb Road.

OWNER/APPLICANT Wichita Collegiate School (owner) MKEC, c/o Brian Lindebak (agent)

LEGAL DESCRIPTION: Generally described as that portion of the 20-foot drainage easement (see attached legal) dedicated by separate instrument (Film 1156, Page 1947) located on Lot 1, Block 1, Country Walk 2nd Addition, Wichita, Sedgwick County, Kansas (WCC District #II)

LOCATION: Generally located on the southwest corner of Webb Road and 13th Street North

REASON FOR REQUEST: Expansion of existing building

CURRENT ZONING: Subject property and abutting south, west and north properties are zoned “SF-5” Single-Family Residential and “GO” General Office. Property east of the site is public right-of-way (ROW)

The applicant is requesting consideration for the vacation of the portion of a 20-foot wide drainage easement dedicated by separate instrument as described. There is a water line in that portion of the easement the applicant wants to vacate. The applicant’s exhibit shows a proposed replacement easement that would cover the re-routed water line. Westar has equipment in the easement and the applicant can remove/relocate the existing equipment at their own expense. Becky Thompson is the Construction Services Representative for the NE Area and can be contacted at 316-261-6320 if needed. The Country Walk 2nd Addition was recorded with the Register of Deeds June 27, 1988.

NOTE: This is a re-filing of VAC2005-00048, which the SD (January 12, 2006) and MAPC (January 19, 2006) approved with the conditions listed below. These conditions were not completed and the case was closed April 8, 2008.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer, Stormwater, Traffic, 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 separate instrument.

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

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time February 28, 2013, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the described portion of the drainage easement dedicated by separate instrument and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate only that portion of the easement dedicated by separate instrument as described in the legal description and as approved by all utilities. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
- (2) Provide Public Works/Water and Sewer with project plans for the abandonment or relocation of the water line for review and approval. 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.

Provide approved project numbers to Planning prior to the case going to City Council for final action

- (3) Retain the easement until all the water line has been relocated.
- (4) Provide City Water & Sewer/Public Works with another easement. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to City Council for final action and subsequent recording with the Register of Deeds.
- (5) All improvements shall be according to City Standards.
- (6) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only that portion of the easement dedicated by separate instrument as described in the legal description and as approved by all utilities. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
- (2) Provide Public Works/Water and Sewer with project plans for the abandonment or relocation of the water line for review and approval. 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. Provide approved project numbers to Planning prior to the case going to City Council for final action
- (3) Retain the easement until all the water line has been relocated.
- (4) Provide City Water & Sewer/Public Works with another easement. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to City Council for final action and subsequent recording with the Register of Deeds.
- (5) All improvements shall be according to City Standards.
- (6) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County

Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

JOHNSON moved, **FOSTER** seconded the motion, and it carried (9-0).

PUBLIC HEARINGS

3. **Case No.: CON2013-03** - RUSS, LLC and Daniel Bryant, VERG Central and Rock LLC (applicants) and POE and Associates, c/o Kim Edgington (agent) request a City Conditional Use to permit a Nighclub in the City within 300 feet of residential zoning in LC Limited Commercial ("LC") zoning, on property described as:

Lot 2 except beginning at the Southeast corner; thence West 244.41 feet; thence Northwesterly 100 feet; thence West 53.18 feet; thence North 233 feet; thence 65 feet; thence North 20 feet; thence East 20 feet; thence North 72 feet; thence West 20 feet; thence North 200 feet; thence East 166.92 feet; thence South 35.42 feet; thence East 110 feet more or less; thence Southwesterly 108 feet; thence Southeast 216 feet; thence South 208 feet to beginning, Block 1, Aull's 1st Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The LC limited Commercial ("LC") zoned site is part of a commercial strip that in the past housed such businesses (1980s) as "The Grape" and "The Shadow," both which provided entertainment, food and cereal malt beverages or alcoholic liquor. The applicants' propose to provide live music (entertainment), food and cereal malt beverages or alcoholic liquor under the business named "Ernie Biggs Dueling Pianos." The Unified Zoning Code (UZC, Sec.II-B.9.b.) defines a Nightclub in the City (nightclub) as "...an establishment located in the City that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor (drinks) are offered, consumed or served to the public or its members, and which may or may not serve food." When a nightclub is located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District, approval of a Conditional Use is required; UZC, Sec.III-D6.w. The site is located within 300 feet of residential zoning. There is no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub on the site. Up until November 23, 2010, the site had maintained an Entertainment Establishment license. When the current applicants applied for an Entertainment Establishment license on January, 17, 2013, they were denied the license, due to the site's nightclub use losing its legal non-conforming status. The loss of the site's legal non-conforming nightclub status is based on the more than two- year absence of Entertainment Establishment license and the lack of a Use Exception or Conditional Use permitting a night when located within 300 feet of residential zoning. The applicant is applying for a Conditional Use for a nightclub because it is located within 300 feet of residential zoning. If the Conditional Use is approved, the applicant will be able to reapply for the renewal of the Entertainment Establishment license.

The proposed nightclub club is one of several tenants in the LC zoned commercial strip building, located north of Central Avenue on the east side Rock Road. Other tenants include (but not limited to): a

barber shop, a realtors office, a tailor's/alternation shop, a tanning salon and a jewelry store. An LC zoned Starbucks coffee shop abuts the north side of the site. Further south, across Rock and Central Avenue, there are: a LC zoned bank, restaurant (DER), retail building and a commercial strip building. LC zoned medical offices and offices abut the east side of the site. MF-18 Multi-Family Residential ("MF-18") zoned condos abut the north side of the site. Further north and east of the site, beyond the condos and the medical/office, there are SF-5 Single-Family Residential ("SF-5") zoned residences and drainage. Multi-tenant LC zoned commercial buildings; a bank, a restaurant and a fast food restaurant are located west of the site, across Rock Road. The commercial buildings have restaurants, retail, office and maybe a bar. B Multi-Family Residential ("B") zoned apartments are also located west of the site across Rock. A LC zoned Dillon's, a Chili's restaurant (DER) and a Krispy Kreme donut shop are located southwest of the site, across Rock and Central.

The applicant's site plan shows the 7,763-square feet the nightclub club will occupy, as well as the square footage of the tenants, the parking and existing drives onto Rock Road.

CASE HISTORY: The site is located on a portion of Lot 2, Block 1, Aull's Addition, which was recorded with the Register of Deeds January 8, 1975. BZA2010-42 reduced the required parking spaces (under 10%) for the expansion of a restaurant, from 128 to 120 spaces. BZA2012-67 further reduced the parking (under 10%) to 110 parking spaces, due to more building renovations. Staff has received calls about the request. All of the calls thought the site was already a nightclub and none expressed concern about the request. The applicants were advised to apply for a Conditional Use, when they were denied their Entertainment Establishment license by the City.

ADJACENT ZONING AND LAND USE:

NORTH:	MF-18, SF-5	Condos, drainage
SOUTH:	LC	Retail strip, retail, DER restaurants, grocery store, donut shop, bank
EAST:	LC, SF-5	Medical, office, single-family residential
WEST:	LC, B	Multi-tenant commercial, restaurant, fast food restaurant, bank, apartments

PUBLIC SERVICES: The site has two drives onto Rock Road. Rock is a major arterial street at this location, with four lanes and a center turn lane. There is also an inside turn lane into the south end of the site off of Rock. All utilities are available to the site.

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

The UZC requires a Conditional Use for a nightclub when it is located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District. The site is not currently permitted for a nightclub. Approval of a Conditional Use for a nightclub at this site would not introduce a new use to the area. The site has housed a nightclub for years, but there is no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub on the site. The loss of the site's legal non-conforming nightclub status is based on the more than 2 year

absence of Entertainment Establishment license and the lack of a Use Exception or Conditional Use permitting a nightclub when located within 300 feet of residential zoning.

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 nightclub club is located within an existing commercial development, with direct access onto the Rock Road arterial. There are no proposed physical changes to the site. Existing commercial buildings are adjacent and abutting its west, south east sides, allowing some buffering for adjacent SF-5 zoned single-family residences. The abutting MF-18 north property is developed as residential condos.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, with the following conditions:

- (1) No outside loudspeakers or entertainment are permitted.
- (2) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood: The Rock Road and Central Avenue intersection has LC zoned commercial and office uses located on all four corners, including the LC subject site located off of the northeast corner of Rock and Central. The proposed nightclub club is one of several tenants in the LC zoned commercial strip building, located north of Central Avenue on the east side Rock Road. Other tenants include (but not limited to): a barber shop, a realtor's office, a tailor's/alternation shop, a tanning salon, and a jewelry store. An LC zoned Starbucks coffee shop abuts the north side of the site. Further south, across Rock and Central Avenue, there are: a LC zoned bank, a restaurant (DER), a retail building and a commercial strip building. LC zoned medical offices and offices abut the east side of the site. MF-18 Multi-Family Residential ("MF-18") zoned condos abut the north side of the site. Further north and east of the site, beyond the condos and the medical/office, there are SF-5 Single-Family Residential ("SF-5") zoned residences and drainage. Multi-tenant LC zoned commercial buildings, a bank, a restaurant and a fast food restaurant are located west of the site, across Rock Road. The commercial buildings have restaurants, retail, office and maybe a bar. B Multi-Family Residential ("B") zoned apartments are also located west of the site across Rock. A LC zoned Dillon's, a Chili's restaurant (DER) and a Krispy Kreme donut shop are located southwest of the site, across Rock and Central.
- (2) The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC, which accommodates office and retail uses. Approval of a Conditional Use would permit the site to continue to be used as a nightclub removing its non-conforming status.

- (3) Extent to which removal of the restrictions will detrimentally affect nearby property: Typical concerns about nightclubs include bad behavior resulting from unlimited liquor sales, the noise from music and dancing, and the hours of the nightclub having a detrimental impact on the adjacent SF-5 zoned residences. These concerns have been present at this site, since the 1980s.
- (4) Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

The UZC requires a Conditional Use for a nightclub when it is located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District. The site is not currently permitted for a nightclub. Approval of a Conditional Use for a nightclub at this site would not introduce a new use to the area. The site has housed a nightclub for years (1980s), but there is no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub on the site. The loss of the site’s legal non-conforming nightclub status is based on the more than 2 year absence of Entertainment Establishment license and the lack of a Use Exception or Conditional Use permitting a nightclub when located within 300 feet of residential zoning.

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 nightclub is located within an existing commercial development, with direct access onto the Rock Road arterial. There are no proposed physical changes to the site. Existing commercial buildings are adjacent and abutting its west, south and east sides, allowing some buffering for adjacent SF-5 zoned single-family residences. The abutting MF-18 north property is developed as residential condos.

- (5) Impact of the proposed development on community facilities: It is possible that approval of this request could result in an increased demand for police services.

BILL LONGNECKER, Planning Staff presented the Staff Report. He reported that he had gotten one call of protest from one of the other tenants within the strip mall.

FOSTER asked if there were any police reports on the property in the past.

LONGNECKER said none that were brought to his attention.

KIM EDGINGTON, 2532 N. CARDINAL DRIVE, REPRESENTING THE PROPERTY OWNER said several issues were going on with the application. She said there was an entertainment establishment license that did lapse, which is usually a process the tenant goes through. However, the landlord/property owner has decided to go through the process and request a conditional use so the property can be used as a nightclub regardless of who is the tenant in the building. She said this building has a long history of this type of use with very few problems. She said the Police said this club

has not been an issue. She said the applicant would like to get the Planning Commission's support for the conditional use so the use will run with the property so it is not incumbent upon the tenant to maintain the entertainment license.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **JOHNSON** seconded the motion, and it carried (8-1). **FOSTER** – No.

NON-PUBLIC HEARING ITEMS

4. **Case No.: DER2012-06** - Further consideration of proposed amendments to the July 9, 2009 Edition of the Wichita-Sedgwick County Unified Zoning Code, as amended, dealing with: Section III-D.1, Principal Use Regulations Schedule; Section III-D.6.b, Supplementary Use Regulations and Section IV-E, Home Occupations and Section V-I.2.p Types of adjustments allowed, including codification and other amendments as required.

BACKGROUND: In 2012 the Metropolitan Area Planning Department ("MAPD") was requested by the Sedgwick County Board of County Commissioners to review *Wichita-Sedgwick County Unified Zoning Code* ("UZC") regulations dealing with rural home occupations. A four-person citizen's committee composed of Charlie Peaster, John Dailey, Max Weddle and Joe Johnson was appointed to assist with the review. MAPD and County Law staff met with the citizen's committee on approximately six occasions. Based upon comments made by the committee, a number of amendments to the UZC, almost exclusively dealing with rural home occupations found in Article IV, Section IV.E, were drafted.

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

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

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

- A) Sec. IV-E is a clarification that there are two types of home occupations – home occupations that are allowed in any residential district regardless of city or county location and rural home occupations that are only allowed in the county. Rural home occupations are those uses that would not be appropriate on urban scale lots, such as "animal care, general and limited" or "contractor storage" or a "machine shop" but are generally considered to be appropriate on larger rural tracts, subject to certain development standards.
- B) Sec. IV-E.3.f allow rural home occupations located in the SF-20 Single-family Residential ("SF-20") and RR Rural Residential ("RR") districts to have the equivalent of four full time employees by right instead of only two employees.

- C) Sec. IV-E.3.g is a clarification that products made at the home occupation site by employees of the home occupation may be displayed or sold on the premises.
- D) Sec. IV-E.5.j adds “tattooing and body piercing facilities (County)” to the list of permitted home occupations.
- E) Sec. IV-E.7.a reduces the minimum lot size requirement for a rural home occupation from 20 acres to two acres (*revised to five acres after the County Commission meeting of November 21, 2012, discussed below*).
- F) Sec. IV.E.7.b reduces from 600 feet to 40 feet (*revised to 120 feet after the County Commission meeting of November 21, 2012, discussed below*) the required separation distance between a rural home occupation and a residence located off-site that does not operate a rural home occupation.
- G) Sec. IV-E.7.d states outside storage shall not be located within any required building setback or within 20 feet (*revised to 50 feet after the County Commission meeting of November 21, 2012, discussed below*) of a property line, whichever is greater instead of 200 feet. Screening of outside storage is required on properties of less than five acres in size or within 50 feet, instead of 600 feet, of a property line or public right-of-way. A provision has been added, Sec. IV-I.2, to allow administrative zoning adjustments to the screening requirements.
- H) Sec. IV.E.7.e states that rural home occupations are permitted to have on-site the equivalent of four full time employees by right, instead of being limited to two employees. Rural home occupation employees that do not report to the site of the rural home occupation do not count towards the total of four full time employees.
- I) Sec. IV.E.7.h states that rural home occupations that cannot meet one or more of the rural home occupation development standards but have two acres may apply for a Conditional Use for a waiver of the standards.
- J) Sec. IV-8.1 clarifies that the parking of one commercial vehicle that exceeds 26,000 pounds, owned by the occupant is a permitted rural home occupation.
- K) Sec. IV.E.7.q-t adds the following used to those uses permitted as a rural home occupation: lawn care service, truck garden, firewood sales, tattooing and body piercing facilities and uses determined by the Zoning Administrator to be similar in character to other listed rural home occupations are permitted.

On November 21, 2012, the Sedgwick County Board of County Commissioners (BoCC) considered the proposed amendments. After considerable discussion, primarily dealing with the minimum land area requirement for a rural home occupation; the minimum separation distance between a rural home occupation and an off-site residence; and the minimum setback from property lines for a rural home occupation and any associated outside storage, the BoCC voted to send the amendments back to the MAPC for further consideration. During the BoCC’s discussion some Commissioners suggested that the minimum land area should be increased from two to five acres (E above); that rural home occupations should be separated from off-site residences by 120 feet instead of 40 feet (F above); and the minimum setback from property lines for a rural home occupation and associated storage should be fifty feet instead of twenty feet (G above).

The amendments presented for the MAPC’s consideration reflect the acreage and distances discussed at the BoCC meeting. All the other earlier recommendations made by the MAPC remain unchanged.

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

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

FINDINGS: In recent years home occupations have become an increasingly significant segment of the City’s and County’s land use mix. It is important to provide opportunities for a wide variety of home occupations in a manner that protects the essential characteristics of low and rural density residential zoning districts from potential nuisances caused by home occupations. It is also important to recognize the different character of homes located in the county on a variety of larger lot sizes and the increased kinds of rural home occupation activities that may be appropriate on larger tracts. Some of the proposed amendments clarify existing home occupation and rural home occupation standards. In other cases, new uses are added, and existing development standards are

modified. With respect to rural home occupations, the proposed changes recognize that most of the county is zoned RR Rural Residential ("RR") which has a minimum lot size of two acres; has a minimum lot width of 200 feet and has building setbacks of 20 to 25 feet. The minimum RR development standards allow for a wider variety of activities and a greater number of employees as a rural home occupation use than would be appropriate on urban scale lots. The kinds of uses allowed or proposed to be allowed as a rural home occupation are generally no more intense than traditional farm activities. The proposed setback and screening requirements are designed to protect nearby residences from excessive traffic or other undesirable impacts while recognizing that many residences are often surrounded by large tracts of farm ground or other natural buffers. The proposed amendments promote the comprehensive plan's goal of providing orderly growth and should not detrimentally impact existing community facilities.

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

DALE MILLER, Planning Staff presented the Staff Report. He introduced Committee members Charlie Peaster, Max Wadle and John Dailey. He said he also received communication from another Committee member Joe Johnson (who had a prior commitment and could not be present at this meeting) that he was fine with the proposed recommendations.

MILLER STEVENS asked staff to explain the advantages of the changes.

MILLER said the original numbers recommended by staff really reduced the distance standards and 2-3 of the County Commissioners felt they were too significant a reduction to provide protection for residences particularly if the rural home occupation was located on a cul-de-sac. He said these numbers provide a better level of protection to off-site neighbors if a rural home occupation is located nearby, but are less stringent than what is on the books today.

FOSTER referenced items D and K on page 2 with regard to tattoo and body piercing facilities. He asked if those activities were allowed as home occupations per State regulations.

MILLER said they were not on the list of permitted home occupations today; however, it was recommended that they be added to list as permitted uses.

FOSTER asked to have legal check on that before this item goes forward to the governing bodies for final approval.

MILLER said that could be done.

FOSTER asked for clarification on item I that someone with 2 acres may still apply for a conditional use permit even though they don't meet the 5 acre requirement for a rural home occupation.

MILLER yes, as long as they meet all the separation requirements someone could come in and apply for a conditional use permit and be approved for a rural home occupation.

WARREN asked for the reasons behind the original recommendations of distances in items E, F, and G, and said those numbers must have come from some place. He asked what would be lost if those numbers were raised.

MILLER said he would let the Committee members speak for themselves. He said with the 2-acres, staff went down to the minimum size that would still make things work, but then realized that would not work in terms of a cul-de-sac. He said he believes the overall impetus for the changes was to loosen the regulations up and make it easier for someone to have a rural home occupation. He said the compromise numbers address both concerns about rural home occupations impacting off site residences but also allowing other sites that may not have previously been eligible to now be eligible.

WARREN asked the Committee members if that was about right.

CHARLIE PEASTER, 9453 N. 135th STREET WEST, SEDGWICK, KANSAS briefly reviewed how the Committee came up with the proposed distances and numbers recommended.

DENNIS referred to Item G on page 4, which he remembered was discussed previously. He commented that it does not say that items have to be produced on the premises. He asked about possible rewording so it would make more sense. He said the way it is currently written, it looks like employees can produce something off site and sell it on site.

MILLER said staff could tweak the language if that is what the Commission wants.

GOOLSBY asked about a family farm where the house may be located on a different adjoining parcel. He clarified they couldn't bring goods to a farmer's market located on their site.

MILLER said if the produce is grown on-site, that is an agricultural activity and not governed by rural home occupation regulations. He said rural home occupation regulations require that services or goods occur on the site.

MCKAY clarified that the Commission previously approved all the recommended changes to the Unified Zoning Code (UZO) with the exception of E, F and G.

MILLER replied yes.

MCKAY said if the Commission wants to rewrite the whole section or change something that was already approved, then he thinks it needs to go back to the Committee for review.

DENNIS commented that there was a lot of give and take and back and forth during the discussion so he was not sure that the wording ended up exactly like the Commission wanted.

WARREN referred to Item E regarding the 5 acres and mentioned that a lot of times when acreage is divided up for suburban properties there will usually be 1 lot that is 4.8 or 5.5 acres. He asked about inserting wording such as "5 acres more or less." He said he believes this provision may create a situation that is not intended

DENNIS said if the Commission recommends that, where is the cut off.

MILLER said staff ran into that situation with people installing lagoons so the UZO was amended to require 4 ½ acres. He referred to page 6 of the actual amending Resolution under (M), a. which

addresses “Each lot or tract shall be located upon a public road and shall contain a minimum of 5 acres, including road right-of-way (ROW).” He said ROW is normally about ½ an acre.

MOTION: To approve subject to staff recommendation.

WARREN moved, **MCKAY** seconded the motion, and it carried (9-0).

DENNIS commented once there is a full commission, Subdivision and Advance Plans Committee assignments need to be reviewed. He asked Commissioners if they have any specific desires to please let him know. In addition, he said he needed a volunteer for the Comprehensive Plan Committee since Commissioner Mitchell has volunteered for WAMPO.

The Metropolitan Area Planning Commission adjourned at 1:00 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 _____, 2013.

(SEAL)

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