

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

June 20, 2013

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, June 20, 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; George Sherman, Vice Chair; Steve Anthimides; David Foster; Matt Goolsby; Bill Johnson (Out @3:15 p.m.); Joe Johnson; Don Klausmeyer; John W. McKay, Jr.; Debra Miller Stevens; M.S. Mitchell and Chuck Warren. Carol Neugent and Don Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jess McNeely, Senior Planner; Jeff Vanzandt, Assistant City Attorney, Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

Committee Assignments

CHAIRMAN DENNIS provided a handout which was the new Subdivision and Advance Plans Committee assignments.

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1. Approval of the prior MAPC meeting minutes.

MOTION: To approve the June 6, 2013 meeting minutes, as amended.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (9-0-3).
ANTHIMIDES, J. JOHNSON and **KLAUSMEYER** – Abstained.

2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

- 2-1. SUB2013-00025: One-Step Final Plat – N & S HILLS ADDITION**, located south of 23rd Street South, on the west side of 391st Street West.

NOTE: This site is located in the County in an area designated as “rural” by the Wichita-Sedgwick County Comprehensive Plan.

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact 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 and water wells. A memorandum shall be obtained specifying approval.
- 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. The applicant will be including a 30-foot drainage easement along the north property line.

- D. The plat denotes “access control except one opening” along 391st Street West. County Public Works has approved the access controls.
- E. Sedgwick County Fire Department advises that the plat will need to comply with the Sedgwick County Service Drive Code.
- F. 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.
- G. 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.)
- H. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- I. 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.
- J. 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.
- K. 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.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Any removal or relocation of existing equipment of utility companies will be at the applicant’s expense.
- N. 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, **GOOLSBY** seconded the motion, and it carried (12-0).

2-2. **SUB2013-00026: One-Step Final Plat – MONIQUE’S ADDITION**, located south of Kellogg, West of 143rd Street East.

NOTE: This is a replat of a portion of the Springdale Lakes Addition in addition to unplatted property to the south.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises the property is currently served by City of Wichita water and sewer.
- 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. “Benchmark” needs to be spelled correctly.
- E. County Surveying requests the plat show where the utility easement changes to a drainage and utility easement along the east line of Lot 1.
- F. The applicant needs to verify the property owner names which do not correspond with the latest deed.
- 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.

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

2-3. SUB2013-00016: One-Step Final Plat – ROADS END COMMERCIAL ADDITION, located on the northeast corner of 47th Street South and Rock Road.

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 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. A restrictive covenant is required that prohibits non-domestic wastes on the site until public sewer is available.

- B. The site is currently located within the Sedgwick County Rural Water District No. 3. If service is available, feasible and the property is eligible for service, Metropolitan Area Building and Construction Department recommends connection.
- C. City of Wichita Public Works and Utilities Department has requested a No Protest Agreement for future extension of sanitary sewer.
- 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 subject to revisions. Any development that disturbs more than one acre will require a stormwater permit.
- F. County Surveying advises that the easement along the north line of Reserve B needs dimensioned.
- G. County Public Works has approved the access controls. The plat proposes one opening along both 47th Street and Rock Road. Access controls need to be referenced in the plat's text.
- H. The applicant shall guarantee the closure of existing entrance off of 47th Street South.
- I. The plat's text shall note the dedication of the streets to and for the use of the public.
- J. The ingress and egress easement shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- K. Sedgwick County Fire Department advises that the plat will need to comply with the Sedgwick County Service Drive Code.
- L. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- M. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- N. 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.
- O. The signature block for the Board of Commissioners Chairman should be revised to read underneath the signature line, "James B. Skelton, 5th District."

- P. GIS has requested abbreviations for the street types and directionals.
- Q. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- R. 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.
- S. 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.)
- T. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- U. 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.
- V. 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.
- W. 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.
- X. Perimeter closure computations shall be submitted with the final plat tracing.
- Y. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.

Z. 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, **GOOLSBY** seconded the motion, and it carried (12-0).

3. **PUBLIC HEARING – VACATION ITEMS**

3-1. **VAC2013-00017: City request to vacate portions of a platted setback, platted utility easement and platted access control**, generally located on the northeast corner of Amidon Avenue and 21st Street North.

APPLICANT/AGENT: Dillon Companies, Inc. (applicant/owner) PEC, c/o Rob Hartman (agent)

LEGAL DESCRIPTION: Generally described as the platted 10-foot wide utility easement that runs parallel to the east side of the east lot line of Lot 2, the platted 35-foot setback(s) along Lot 2's street frontages, the platted 190-foot setback that runs parallel to the west side of Lot 1, and the platted access control along the south and west sides of Lot 2, all in the Amidon Plaza Addition.

LOCATION: Generally located on the northeast corner of the Amidon Avenue and 21st Street North intersection (WCC #VI)

REASON FOR REQUEST: Redevelopment of the site with a boundary shift.

CURRENT ZONING: Subject property is zoned mostly LC Limited Commercial ("LC"), with B Multi-Family Residential ("B"), and GO General Office ("GO") zoning and has a CUP overlay; CUP DP-76. Abutting north property is zoned B and adjacent west, south and east properties are zoned are zoned GO and LC with CUP overlays.

The applicant is requesting consideration to vacate the platted 10-foot wide utility easement that runs parallel to the east side of the east lot line of Lot 2, Amidon Plaza Addition. Proposed redevelopment of the lot will also include a boundary shift of Lot 2's north and east lot lines, which would leave the easement not abutting a lot line. There are no public utilities in the subject easement. Contact LaDonna Vanderford@westarenergy.com for Westar equipment.

The proposed boundary shift, pushing Lot 2's lot lines further north and east is also triggering the request for the vacation of Lot 2's platted 35-foot street frontage setbacks. Another consideration is possible future improvements to the 21st Street North – Amidon Avenue intersection could require additional right-of-way (ROW). The platted 10 to 25-foot wide contingent ROW along the Amidon Plaza Addition's 21st frontage is now a full dedication. Lot 2's south, platted 35-foot setback will have to be vacated and rededicated; the minimum setback for a CUP's frontage is 35 feet. Lot 1's platted 85-foot setback will be vacated and rededicated. Lot 2's Amidon frontage extends 10 feet beyond the rest of the Amidon Plaza Addition's Amidon frontage. This will be dedicated as ROW, requiring Lot 2's west platted 35-foot to be vacated and rededicated.

The proposed boundary shift, pushing Lot 2's lot lines further north and east is also triggering the applicant's request to vacate portions Lot 1's platted access control along both Amidon and 21st. The applicant proposes to close the south most of Lot 1's two permitted drives onto Amidon and shift it further north, serving both Lots 1 and 2. With the shift the applicant will eliminate the Amidon Plaza Addition's permitted drives onto Amidon from three drives to two drives. The proposed drive would function as right-in – right-out, as there is a full median in Amidon. The applicant proposes to shift Lot 2's current drive onto 21st further east. The proposed drive would function as a right-in – right-out drive since there is a full median in 21st. The shift will not change the Amidon Plaza Addition's permitted two drives onto 21st. 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; the full median in both 21st and Amidon ensures there no conflicting left turns opposite the site. Subdivision standards require a 200-foot spacing for right-in – right-out drives, however the Subdivision Regulations (“SD”) allow consideration of modifications to those standards; SD 10-104. The Amidon Plaza Addition was recorded October 23, 1996.

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

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 May 30, 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 utility easement and portions of platted access control and platted setbacks 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) Provide Planning with a final draft of the proposed boundary shift of Lot 2, Amidon Plaza Addition's lot lines. This will confirm the proposed final size and configuration of both Lots 1 and 2, Amidon Plaza Addition and confirm location of proposed setbacks and access control as well as address the consideration of ROW along the Amidon Plaza Addition's 21st and Amidon frontage. Upon MAPC approval of VAC2013-00017, provide Planning with the recorded boundary shift, which will be applied to an application for an Administrative Adjustment to CUP DP-76's Parcels 1 and 2, Gardners Riverlawn Community Unit Plan.
- (2) Per the approval of the Traffic Engineer, vacate the access controls along the Amidon Plaza Addition's Amidon Avenue and 21st Street North frontages to allow a right-in – right-out drive onto Amidon Avenue a right-in – right-out drive onto 21st Street North. Provide Planning Staff with a legal description of the approved vacated portions of 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.
- (3) Dedicate by separate instrument access control, with original signatures, along the Amidon Plaza Addition's 21st and Amidon streets. This needs to be provided to Planning to go with the Vacation Order for recording with the Register of Deeds. This needs to be provided 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.
- (5) All improvements shall be according to City Standards and at the applicant's expense, including; the construction of a new drives from the site onto 21st Street North and Amidon Avenue, the continuation of the curb(s) over the old drive(s) and the continuation of sidewalk(s). 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) Provide Planning with a final draft of the proposed boundary shift of Lot 2, Amidon Plaza Addition's lot lines. This will confirm the proposed final size and configuration of both Lots 1 and 2, Amidon Plaza Addition and confirm location of proposed setbacks and access control as well as address the consideration of ROW along the Amidon Plaza Addition's 21st and Amidon frontage. Upon MAPC approval of VAC2013-00017, provide Planning with the recorded boundary shift, which will be applied to an application for an Administrative Adjustment to CUP DP-76's Parcels 1 and 2, Gardners Riverlawn Community Unit Plan.
- (2) Per the approval of the Traffic Engineer, vacate the access controls along the Amidon Plaza Addition's Amidon Avenue and 21st Street North frontages to allow a right-in – right-out drive onto Amidon Avenue a right-in – right-out drive onto 21st Street North. Provide Planning Staff with a legal description of the approved vacated portions of 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.
- (3) Dedicate by separate instrument access control, with original signatures, along the Amidon Plaza Addition's 21st and Amidon streets. This needs to be provided to Planning to go with the Vacation Order for recording with the Register of Deeds. This needs to be provided 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.
- (5) All improvements shall be according to City Standards and at the applicant's expense, including; the construction of a new drives from the site onto 21st Street North and Amidon Avenue, the continuation of the curb(s) over the old drive(s) and the continuation of sidewalk(s). 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.

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

PUBLIC HEARINGS

4. **Case No.: ZON2013-10** - Raymundo and Maria Rosales (owner) request a City zone change from "B" Multi-Family Residential to "GC" General Commercial on property described as:

Lots 36, 38 and 40, Block B, Montrose Park Addition, Wichita, Sedgwick County, Kansas.

At its regular meeting on June 6, 2013, MAPC considered the above captioned request. The action of the MAPC was to **DEFER** the request to the June 20, 2013 MAPC hearing. MAPC instructed Planning Staff to draft a Protective Overlay (PO) that would restrict the uses on the site, restrict the number of busses per week at the site and address parking on the site. The MAPC also recommended that the applicant provide letters of support from surrounding property owners. Planning Staff met with the applicant and re-stated the MAPC recommendation in a follow-up letter.

With MAPC direction, and consultation with the applicant, staff recommends the following PO:

1. Uses on the site shall be limited to those permitted in the B Multi-family zoning district, a chartered bus terminal, and manufacturing, limited only.
2. The bus terminal operations shall be limited to one chartered bus pick-up per week and one chartered bus drop-off per week.
3. Chartered busses shall not exceed 40 seats in size.
4. The applicant shall provide a dimensioned site plan, for planning staff approval, demonstrating bus dimensions and an off-street bus loading location.
5. The site shall be maintained and operated in conformance with the approved site plan and all applicable codes.

The applicant indicates that the busses have 40 seats and are double rear-axle busses. This type of bus can be up to 45 feet in length based on internet research. The Unified Zoning Code (UZC) requires off-street parking and loading space for all land uses in all zoning districts except CBD Central Business District. Because the UZC does not identify a bus terminal land use, the UZC states that the zoning administrator shall apply the parking and loading requirements for the listed use deemed most similar. As the proposed PO limits the bus terminal to one bus pick-up and one drop-off per week, the zoning administrator requires one parking space per three seats, similar to restaurants and auditoriums. Based on a 40 seat bus, 14 off-street parking spaces are required. Also, the UZC requires off-street loading spaces for similar uses. Commercial and institutional uses base the loading space requirement on facility size. Day Care facilities require one per ten students; with a similar drop-off and pick-up operation, the zoning administrator requires four loading spaces.

Because Park Place, as a local street, permits on-street parking, a PO cannot prohibit on-street parking for the proposed use, nor would such a prohibition be easily enforced. The application area does not have enough room to meet the off-street parking and loading requirement. The applicant could possibly meet the parking and loading space requirement on adjacent property. A PO can make UZC requirements more restrictive, but cannot lessen or eliminate UZC requirements. If the applicant wishes to eliminate the parking or loading space requirement, the applicant will be required to obtain a Board of Zoning Appeals (BZA) variance of the UZC required off-street parking and loading spaces.

JESS MCNEELY, Planning Staff presented the Staff Report.

MCKAY asked about the provision for manufacturing.

MCNEELY indicated the applicant has asked to manufacture ice cream on site.

G. SHERMAN asked staff to explain the difference between loading and parking spaces.

MCNEELY said loading spaces are measured in car length spaces where drop offs are typically made, such as hospitals, etc.

G. SHERMAN clarified that the applicant would need 14 parking spaces plus four loading spaces. He also asked about the requirement for the bus.

MCNEELY indicated that was correct and added that the requirement is four stacking or queing spaces for pick up and drop off. He added that day cares have the same requirement. He said the bus must be able to pull onto the site and load and unload people on site. He said that is the only way the applicant can meet UZC requirements and have the intended use take place on the site.

DENNIS asked if staff recommends approval or disapproval of the application.

MCNEELY said staff recommendation is consistent with the first Staff Report which was to recommend denial because the site does not feasibly accommodate the proposed use; however, with Planning Commission's guidance, staff did draft a Protective Overlay that would make the proposed uses more compatible with surrounding uses.

DENNIS clarified that there is no way the applicant can meet the parking requirements.

MCNEELY responded the applicant cannot meet the parking requirements on this site; however, if they could negotiate a leased/shared parking agreement with the owner immediately to the north they could even possibly operate off the property immediately to the north. He added that the UZC does require that the parking area be paved, which at this time it is not.

DENNIS clarified that staff sat down with the applicant and discussed the different options and staff's recommendations and that the applicant understands.

MCNEELY said yes, he has spoken with the applicant and explained the PO that staff was recommending and the UZC required off street parking which the dimensions of the site will not allow. He also explained that the applicant could apply for an adjustment to those requirements through the Board of Zoning Appeals; however, staff did not see how the applicant could meet the parking and loading requirements.

B. JOHNSON asked about acquiring parking to the east or at some other location.

MCNEELY said off street parking can be acquired at a remote location; however, it must be within 600 feet of the site and the remote location can only provide one-half of the parking requirements.

B. JOHNSON clarified the applicant can't meet that remote requirement to the north.

MCNEELY replied correct.

G. SHERMAN asked would the area located directly to the north of the site be considered remote parking.

MILLER said there is a provision by administrative adjustment to provide 50% of the parking at a remote location, but it would not be allowed by right.

MITCHELL asked staff to clarify the last sentence of the staff memorandum.

MCNEELY responded that essentially the only way for this property owner to eliminate the off street parking requirement would be through a variance. He said that would be a completely separate application and completely separate review process. He said State Law requires that five criteria be met to be granted a variance. He said the hardest two requirements to meet are that there has to be something unique about the property unlike all other property in the zoning district and that any hardship on the property was not brought on by the applicant.

RAMON ROSALES, 2914 NORTH PARK PLACE said he talked to the neighbors and everyone signed a paper saying they don't have any problem but to make sure people do not block their driveways. He said the bus is 45 feet long and does not block any of the streets. He said he talked to the owner to the north about selling him a piece of land but the owner does not want to sell right now. He said the owner to the north will let Mr. Rosales' customers park their cars on the property.

DENNIS asked the applicant if he understood that if they use the parking to the north it has to be paved. He asked if the owner was okay with paving the area.

ROSALES said there is enough concrete there already for 50 or 60 cars.

DENNIS asked the applicant if he understands the City parking requirements.

ROSALES responded yes.

DENNIS clarified that it does not appear the applicant can meet those requirements with this site.

ROSALES said like he told the Commission the last time, a lot of people park on the street all day from 6:00 a.m. until 3-4:00 p.m. and block the street. He said the cars that use the bus service don't stay longer than 30-40 minutes at the most.

DENNIS asked if the applicant sat down with staff and understands all the requirements.

ROSALES said yes, several times and knows what they are talking about.

G. SHERMAN said the Commission has staff's recommendation to deny the application or if they don't deny it, staff recommends putting conditions on it that the applicant can't meet, which is tantamount to denying the application. He said there is a small chance the applicant could meet the requirements on the other property. At the current location they don't have enough driveway length to get the bus off the

street or enough off street parking spaces. He said from the beginning he has wanted to make this work but he doesn't know how.

FOSTER asked staff to clarify what could happen on adjacent property to make this proposed application possible.

MCNEELY said the space immediately north of the application is not paved; however, there is pavement further north which could meet off the street parking requirement through a shared parking agreement filed with MABCD. He said through an administrative adjustment the applicant could have more than 50% of the required parking on adjacent property. He said the space between where the applicant is currently operating and where paved parking is located to the north is in excess of 150 feet so they would be looking at moving the entire operation onto the property to the north. He said he can't see foot traffic going back and forth between the two sites.

FOSTER asked if a BZA adjustment would allow the applicant to encroach into the right-of-way. He also asked if there could be an adjustment to allow a gravel parking lot.

MCNEELY said there is no variance or adjustment that allows encroachment into a right-of-way.

MILLER indicated the UZC doesn't allow gravel parking, other than for storage. He said for parking and circulation the UZC requires concrete or asphalt or equivalent.

MCNEELY said because there is no administrative adjustment that allows for unpaved parking that would require another variance of the UZC.

B. JOHNSON asked about the property line on the north side of the garage.

MCNEELY estimated there is 20-30 feet between the north side of the garage and the property line.

B. JOHNSON said so if the applicant poured a slab to the northeast of the garage they could get the bus onto their property.

MCNEELY said that was correct.

WARREN complimented staff for their work on the overlay and said it was obvious it was the desire of the board to try to make this application work. He referenced putting a square peg in a round hole. He said he was going to recommend the Commission approve the application, knowing it will probably go before the BZA and be denied because he wanted to give the applicant every opportunity.

MCNEELY said the applicant could pursue a parking and loading agreement with the neighbor to the north.

WARREN said people park on the street now and no one seems to have a problem with that but if the applicant has a parking agreement with the neighbor, which will fulfill the requirement from a legal and practical standpoint.

MOTION: To approve subject to the Protective Overlay as recommended by staff.

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

There was brief discussion concerning the amount of right-of-way and distance between the property line and street.

MCKAY suggesting amending the motion to allow the applicant to pour a concrete slab to the north of the garage to get the bus in there and put in additional paved parking.

MOTION AMENDED to include the provision for paving north of the garage area.

DENNIS said he is concerned that they still don't have a complete solution to this problem. He said he hates to keep deferring this case. He said the applicant needs to decide if they are going to acquire property to the north that will meet the requirements or is he going to pour a slab at the current site that will meet the needs. He said he can't vote for the motion the way it is now. He said he would prefer to defer the application one more time to make sure they have a solution rather than just band aids.

B. JOHNSON said he believes they have a solution and does not want to defer the application. He said the applicant will just do what he can do.

G. SHERMAN said the Commission is approving the application based on staff recommendations. He said they are not saying how the applicant needs to meet those requirements; the Commission is just giving him an opportunity to try and figure it out.

DENNIS said he could live with this if the requirements are spelled out and the applicant knows what the requirements are. He said if the applicant cannot meet the requirements; he cannot continue to do business as he is doing now.

ANTHIMIDES asked if this application is approved, does that open up more opportunity for the applicant to go to the BZA and apply for a variance.

MCNEELY said with the current motion and amendment, it would be up to the applicant to meet the requirements with a shared parking agreement and site plan demonstrating how they can pull the bus all the way onto the property; or if they are unable to do that, they have the option of applying for a variance of the parking and loading requirements.

The **MOTION**, as amended, carried (12-0).

5. **Case No.: ZON2013-00012** - Robert James Morris (Owner/Applicant), Robert Heider (Owner/Applicant), Lynne Penner (Agent) and Todd Fox (Agent) request City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on property described as:

Lot 20 EXCEPT the West 94 feet, Guthrie's Subdivision of Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant requests a zone change from SF-5 Single-family Residential ("SF-5") to TF-3 Two-family Residential ("TF-3") on two acres consisting of Lot 1 and 1/13th undivided interest in the Lake facility and Lot 2 and 1/13th undivided interest in the Lake facility, Lakeside Acres 1st

Addition, Wichita, Sedgwick County, Kansas. The subject site is located approximately one-half mile between East 13th Street North and East 21st Street North, along the west side of North 127th Street East (1815 North 127th Street East). The applicant proposes to develop the property with upper-scale, executive duplex structures. The *Unified Zoning Code* (UZC) defines a duplex as...“the use of a lot for two principal dwelling units within a single building.” The code permits building heights up to 35 feet in the TF-3 district, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing property would allow only one duplex structure with two living units or one single-family structure (permitted by right in the TF-3 district); however it is possible to replat or lot split the existing 1.76-acre (or 75,358 square feet) lot into twelve 6,279 square-foot lots that could allow twelve duplex structures (3,000 square feet minimum lot area per dwelling unit for duplex or 6,000 square feet per duplex). However, the applicant only intends to build four duplex structures containing a total of eight dwelling units.

All property surrounding the subject site is zoned SF-5, and is developed with single-family residences. The properties to the east are separated from the subject site by 127th Street East and the properties to the south are separated from the subject site by the old railroad right-of-way.

CASE HISTORY: Lot 1 and 1/13th undivided interest in the Lake Facility and Lot 2 and 1/13th undivided interest in the Lake facility, Lakeside Acres 1st Addition, Wichita, Sedgwick County, Kansas, was recorded with the Register of Deeds on April 6, 1955.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family Residences
SOUTH:	SF-5	Single-family Residences
EAST:	SF-5	Single-family Residences
WEST:	SF-5	Single-family Residences

PUBLIC SERVICES: 127th Street East is classified as a two-lane, paved minor arterial road with no traffic counts. Municipal water and sewer does serve the subject area.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. Urban Residential is a category that encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes: single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request for the TF-3 Two-family Residential (“TF-3”) zoning be APPROVED.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** All property surrounding the subject site is zoned SF-5 and develop with single-family residences. The properties to the east are

separated from the subject site by 127th Street East and the properties to the south are separated from the subject site by the old railroad line and right-of-way.

2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be developed with multiple single-family residences use under the current zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** As currently zoned, approval of the request would double the density at which the site could be developed. The impact on nearby residents could be increased traffic. However, single-family residences typically generate more traffic per unit than two-family residences.
4. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Denial presumably could cause the applicant a relative economic loss. Approval could introduce a multi-family residential use in a predominant single-family residential setting where such uses are increasing in popularity, especially high end duplex and multi-family development.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. Urban Residential is a category that encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes: single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.
6. **Impact of the proposed development on community facilities:** The site currently has one point of access from 127th Street East, a minor arterial. Approval of the request should not have a negative impact on community facilities; especially since all sewer and water lines are in place and roads have already been constructed.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MCKAY recused himself from the item saying he was involved with the apartment complex.

He reported that DAB VI recommended approval of the application. He added that no one spoke in opposition to the request at the DAB meeting. He said staff has requested a “no protest” petition on paving of Garland Street from the applicant, which the applicant has agreed to provide.

WARREN asked staff to explain the “no protest” petition on the paving of Garland Street.

LONGNECKER explained that if at any point in the future, the majority of houses along Garland vote to pave Garland Street, the applicant agrees to go along with that and will not protest paving of Garland Street.

CHRIS BOHM, RUGGLES & BOHM, 924 N. MAIN, AGENT FOR THE APPLICANT said regarding dedication of the half street right-of-way up to 23rd Street, there is no legal space for a full roadway to be extended. He said at some point in time the other half of the right-of-way could be obtained through platting or by dedication. He said at that time the residents along Garland Street could choose to sign a paving petition. He said the City standard is to go half the distance either way on the side streets so 23rd and 22nd Streets would also be assessed and could potentially be in the benefit district so there could be some liability for paving assessment.

GOOLSBY asked the agent if the applicant was totally in agreement with the no protest petition on paving.

BOHM responded that if the no protest petition is a condition for the zone change, the applicant is in agreement with the condition.

MOTION: To approve subject to staff recommendation.

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

6. **Case No.: ZON2013-00013** - N&N Properties, LLC (Gaylan Nett) / Ruggles & Bohm, P.A. (Chris Bohm) request a City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on property described as:

Lot 20 EXCEPT the North 361 feet and EXCEPT the North 114 feet of the West 139 feet of the South 249 feet and EXCEPT the South 135 feet of the West 125 feet thereof, Knight Acres Addition to Wichita, Sedgwick County, Kansas.

AND

The South 135 feet of lot 21, Knight Acres Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is seeking TF-3 Two-family Residential (TF-3) zoning on .95 acre (approximately 41,382 square feet) zoned SF-5 Single-family Residential (SF-5) that is located north of West St. Louis Avenue, approximately 300 feet east of North Knight Street. The property is developed with a single-family residence and other accessory structures. The County Assessor's records indicate the existing residence was built in 1946. The applicant's agent indicates that the property will be lot split in a way so that the existing house will remain and that a duplex structure will be built to the east of the existing residence and a second duplex structure will be built to the west. The property has approximately 264 feet of frontage along West St. Louis Avenue.

Abutting and adjoining properties are predominantly zoned SF-5 and developed with single-family residences, two-family residences, radio broadcast towers or are vacant. A property, .9 acre in size, located approximately 100 feet east of the application area, at the southwest corner of West St. Louis and North Joan Street, is zoned TF-3, and is developed with four two-family residences. Lot sizes surrounding the application area range in size from 2.69 acres to 10,890 square feet.

In the TF-3 district, the Wichita-Sedgwick County Unified Zoning Code (UZC) permits single-family residential development on lots as small as 3,500 square feet and duplex development on lots with a minimum lot area of 3,000 square feet per dwelling unit or 6,000 square feet per duplex structure. A duplex is defined by the Unified Zoning Code as the use of a lot for two principal dwelling units within a single building. If the site were scrapped clean, it could accommodate 6.89 six-thousand square-foot lots or up to six duplex structures.

The City's Stormwater Engineer indicates he is aware of drainage concerns at the intersection of North Sheridan Avenue and West St. Louis where water is reported to be curb depth or somewhat higher on occasion. The Federal Emergency Management Agency floodway map indicates the property has a less than .2 percent chance of annual flooding.

CASE HISTORY: The application area is parts of Lots 20 and 21, Knight Acres Addition that was recorded in December of 1918.

ADJACENT ZONING AND LAND USE:

North: SF-5; single-family residential
South: SF-5, TF-3; single-family residential, duplex
East: SF-5; vacant, radio broadcast tower
West: SF-5; single-family

PUBLIC SERVICES: West St. Louis Avenue has 50 feet of right-of-way, and is a paved local road. Municipal services are adjacent to the site or are nearby and are available for extension. There is a manhole for an eight-inch sanitary sewer line located on the subject property. A water main is located in West St. Louis Avenue right-of-way.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for "urban residential" uses. The "urban residential" category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly. Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.

RECOMMENDATION: Based upon the information available at the time this report was prepared, staff recommends approval of the request.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Abutting and adjoining properties are predominantly zoned SF-5 and developed with single-family residences, a radio broadcast tower or are vacant. A property, .9 acre in size, located approximately 100 feet east of the application area, at the southwest corner of West St. Louis and North Joan Street, is zoned TF-3, and is developed with two-family residences. Lot sizes surrounding the application area range in size from 2.69 acres to 10,890 square feet.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5 which primarily permits single-family residential uses plus some other institutional and civic uses. The site is developed with a single-family residence and could presumably continue to be used as developed, or re-developed with single-family residences.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact adjoining properties. TF-3 zoning has previously been introduced into the larger neighborhood. Existing code requirements contained in the zoning, building, fire and sanitation codes should mitigate any anticipated impacts.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would allow the property to be more intensely developed and probably represents an improved economic opportunity for the property owner.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for “urban residential” uses. The “urban residential” category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly. Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.
6. Impact of the proposed development on community facilities: An increase in the number of dwelling units will result in an increase in the number of trips generated from the site when compared to a single-family residence; however, existing facilities are in place or can be obtained with a re-plat or lot split. The amount of impermeable surface created by the proposed development will create a negligible increase in runoff.
7. Neighborhood support or opposition: Staff has received two letters in opposition to the request.

DALE MILLER, Planning Staff presented the Staff Report. He reported that DAB VI recommended approval, but added that a number of people spoke in opposition to the request. He added that he has received nine letters of opposition to date. He referred Commissioners to hand outs at today’s meeting. He said some of the concerns expressed were that rental properties wouldn’t be maintained like owner occupied properties. He said there was also a concern that increased development will increase the flooding that currently occurs in the area. He said the City Stormwater Engineer has indicated that the request will not detrimentally impact the area. He said the Stormwater Engineer indicated that drainage along Sheridan and St. Louis Streets gets curb deep and there is need for improvements in the area. He said there were also concerns about crime and safety.

CHRIS BOHM, RUGGLES & BOHM, 924 N. MAIN, AGENT FOR THE APPLICANT indicated he had attended the DAB meeting and acknowledged that residents spoke in opposition to the request. He said this is a straight forward request for Two-Family Residential zoning with the idea of refurbishing the existing structure into a possible duplex and adding one more structure right now and

possibly another in the future. He said at the DAB meeting they discussed drainage, water flow and how streets are designed to handle flow at some depth and traffic concerns. He said one of the DAB members reported that the trip generation from TF-3 is actually lower than from a single-family home according to the National Traffic Institute. He said this is an in-fill spot that the applicant would like to utilize.

FOSTER clarified that the applicant was talking about two duplexes.

BOHM said the current plan was to develop up to two duplexes so there would be three structures; however, he said as he pointed out at the DAB meeting, if the zoning is changed and the applicant wants to replat at a later date and gain more density at the site, they would be within their right to do so. He said that is not the plan right now, but he doesn't want to try to sell the request on the idea that it is just going to be two structures. He said a site plan is not required, but the plan could change over time. He noted that the vacant area adjacent to the site could be zoned for duplexes in the future and that could turn into a bigger development plan. He concluded by saying that two structures is the plan as it stands right now.

SUE MULL, 516 N. KNIGHT said they are not in favor of two duplexes, but knowing there is a possibility that there could be six structures is of greater concern to them. She said this is a good family neighborhood with single-family homes except for one duplex. She said police are continually at the duplex day and night for many reasons. She said with the history of this duplex, they are concerned that this same type of activity is going to occur behind them.

FOSTER asked the speaker what was their experience with the other duplexes in the area.

MULL suggested he ask her husband.

ROBERT MULL, 516 N. KNIGHT said a couple of neighbors on 9th Street asked if they could make comments about the duplexes that went in down the street and were told that they are more than 200 feet away so they didn't have anything to say about it. He said the other duplexes are a slab of concrete with four houses put in elbow to elbow. He said sometimes people can't afford anything better and there is nothing wrong with that. He said his main concern is if the site were scraped clean it could accommodate up to six duplexes. He said when the request first came up he didn't see any problem with one duplex, but he does have a problem with six duplexes.

G. SHERMAN asked the speaker to point out where his home was located on the aerial map.

MULL indicated the property directly adjacent to the site. He mentioned that he tried to purchase part of the adjoining property for garden space.

BOHM said he didn't sit down and do the math to try to figure out if you could get six units on the site. He said that would be a stretch and the proposal would have to go through the replatting process and be heard by the both the Subdivision Committee and in turn the Planning Commission. He said the applicant does not intend to scrape the site; however, he reiterated that a zone change is a zone change and once the zoning is changed, the site is available for that use. He said it is an infill project and it is more than likely that two additional units will be put on the site using the lot split process.

WARREN asked about the size of the units the applicant plans to build.

BOHM referred the question to the property owner.

GAYLAND NETT, 1650 S. MERIDIAN, APPLICANT said the units are 1,100 square feet with three bedrooms; two bathrooms and an attached garage. He said the units rent from \$750 – \$900 per month depending on the neighborhood where they are located.

MCKAY asked the applicant if the Commission requested an overlay of no more than three buildings or six units would they be opposed to that even though it would restrict them in the future.

NETT said there are adjacent properties and if they were rezoned and replatted at a later time, it would devalue his property.

MCKAY said that would have no bearing on this piece of property. He asked about a maximum of three buildings or six units on this ground.

NETT said the house currently rents for \$1,000 a month so it is not going to get taken down. He said he was okay with a three building maximum.

MITCHELL said the application states two lots; however, the drawing he has shows two lots and part of something else.

BOHM said he would have to look at the legal, he said it looks like the application area is part of three lots to him.

MCKAY said his conversation with the property owner excluded the house already on the property.

BOHM clarified that his understanding of the proposed PO is that within the confines of the legal description provided, three units could be placed and the current house could be used as it exists or it could be replaced.

MCKAY said the owner doesn't want to tear the house down. He said in addition to the house, they could build three additional duplexes.

BOHM said correct; that is acceptable.

G. SHERMAN asked if the letters that had been received are within the protest or notification area.

MILLER said he was not sure; however, it appeared that most of the letters are similar so there must have been some type of form letter used and modified for each individual home owner.

G. SHERMAN said one of the speakers mentioned that someone was told they couldn't come and speak or sign a petition because they were out of the protest area. He asked staff about that.

MILLER said he believes what happened was that in the process of explaining the super majority vote required for passage by the governing body, only protests from residences within a 200-foot distance of

the site count. He said he believes people convert that to mean that if their residence is beyond 200 feet, then they can't do anything.

DIRECTOR SCHLEGEL clarified that they can sign a protest petition; however, it does not count towards getting the 20% required for a super-majority vote.

WARREN said having spent one half of his adult life living in duplexes, he said he believes the concerns the neighbors have aren't related to the value of properties. He said people who are lower income seem to have more problems and that is just a social economic aspect of life. He said he can't see any justification for not approving what the applicant is requesting.

MILLER requested clarification that the Commission was not restricting the existing home from being modified.

MOTION: To approve subject to staff recommendation with a protective overlay limiting development to a maximum of 8 units.

WARREN moved, **MCKAY** seconded the motion, and it carried (10-2). **FOSTER** and **MILLER STEVENS** – No.

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7. **Case No.: CON2013-00012** – Henry T. and Lyneisa M. Cocking (owners/applicants) request a County Conditional Use request for a boarding, breeding and training kennel on "RR" Rural Residential zoned property on property described as:

Beginning 330 feet East of the Northwest corner of the Northeast Quarter; thence East 330 feet; thence South 660 feet; thence West 330 feet; thence North 660 feet to beginning EXCEPT the North 50 feet for road, Section 1, Township 27, Range 3 West, Sedgwick County, Kansas

BACKGROUND: The applicants are requesting a Conditional Use for a Boarding/Breeding/Training Kennel for a maximum of 12 dogs on their RR Rural Residential (RR) zoned 4.55-acre site, located approximately 1/3-mile west of 215th Street West on the south side of 29th Street North. The Unified Zoning Code (UZC), Art-II, Sec-II.6h., defines a Boarding/Breeding/Training Kennel as "...a premise housing five or more adult dogs, three or more of which are owned by someone other than the property residence, and premises housing over 10 dogs." The UZC, Art.III, Sec.III-D, 6-k., requires a Conditional Use for a Boarding/Breeding/Training Kennel when located within the RR zoning district.

The applicant has provided a site plan that has been used to determine its compliance with the UZC's Supplementary Use Regulation standards (Art.III, Sec.III-D, 6-k) for a Boarding/Breeding/Training Kennel as follows:

(1) Minimum Lot Area. The minimum lot size for Boarding/Breeding/Training Kennels shall be five acres, unless all animals are harbored indoors with no discernible noise or odor at the property lines. *The site is 4.55 acres in size. The site's size does not meet the 5-acre standard and never will unless the applicant can purchase additional land from abutting, eastern, western or southern properties. The proposed facility will have outdoor runs attached to the 12 indoor kennels, which in turn are part of a proposed indoor training area housed in an existing 40-foot {x} 60-foot building. The applicants also propose two outdoor training areas for one dog at a time. The outdoor runs and training areas do not*

meet indoor housing standard. The UZC, Art.V-D.6., allows the MAPC to make one or more modifications to the Supplementary Use Regulations in the form of a recommendation to the Governing Body for final action.

(2) Setbacks. Outside runs, holding pens or other open-air type enclosures and shelters shall be located behind the Front Setback Line and located at least 200 feet from any Dwelling Unit other than the Owner's and at least 50 feet from Contiguous property lines. *The applicants' indoor training building portion of the proposed kennel (located in an existing 40-foot {x} 60-foot building) is located 140 feet west from a single-family residence and 34 feet west from the nearest, east Contiguous property line. The applicants could meet this standard by re-locating the proposed kennel to a more central part of their property. This would mean that the applicants could lose the use of the existing 40-foot {x} 60-foot building as an indoor training facility as well as the screening it provides; UZC, Art.V-D.6.*

(3) Screening. Screening shall be provided except for those facilities located 600 feet or more from Contiguous property lines. Screening shall be provided by Structure, solid or semi-solid Fencing, landscape materials, earth berms or natural Site features maintained for the purpose of concealing the view of the animals behind such Fence, landscape material, berm or natural feature from activities on Contiguous properties. If Fencing is used, it shall not be less than four or more than eight feet in height. If Fences over six feet in height, landscape materials or earth berms are used, a plan shall be submitted for approval to the Planning Director and Zoning Administrator. Fences used for Screening may have no more than five percent open surface. Landscape materials must provide the desired Screening effect within the first growing season following installation and throughout the year every year thereafter. *The applicants' indoor training building screens the kennel's outdoor runs and the north outdoor training area. Screening or landscaping providing the desired Screening effect within the first growing season following installation and throughout the year every year thereafter is needed on the south, west and portions of the east sides.*

The applicants also request a 32 square-foot sign for the business. The County permits 8 square feet of signage by right; however, in conjunction with a Conditional Use application, a larger sign may be approved.

The site is located in RR zoned unincorporated rural Sedgwick County. Most of the area is used for agriculture. The site is one of eight single-family residences built (1990-1998) on 4.5-acre lined up on the south side of 29th Street North, starting west of 215th Street West. There are another six large tract single-family residences or farmsteads (built 1945-1998) located within a ¼-mile of the site. A subdivision like cluster of large tract single-family residences is located approximately ½-mile south of the site.

CASE HISTORY: The site is unplatted. The existing house on the site was built in 1998. As previously noted there is also an existing 40-foot {x} 60-foot accessory building on this site.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	Agricultural fields, farmstead
SOUTH:	RR	Agricultural fields, single-family residences
EAST:	RR	Single-family residences, agricultural fields
WEST:	RR	Single-family residence, agricultural fields

PUBLIC SERVICES: 29th Street North and 215th Street West are paved, two-lane County Highways. The site is served by a lagoon for waste and well water. All other utilities are available.

CONFORMANCE TO PLANS/POLICIES: The ‘2030 Wichita Functional Land Use Guide of the Comprehensive Plan’ identifies the site as Rural. The Rural category encompasses land outside the Wichita and small cities’ growth areas. It is intended for agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County and predominately large tract single-family residences of two or more acres with provisions for individual or community water and sewer services.

A Boarding/Breeding/Training Kennel located within the RR zoning district, can be considered for a Conditional Use, per the UZC’s Supplementary Use Regulation standards; Art.III, Sec.III-D, 6-k. The site appears to partially conform to those standards. As noted the screening requirements must be met. Also the applicants are requesting modification of the Supplementary Use Regulation standards: (1) the 5-acre minimum lot area and the prohibition of outdoor runs and training areas on a site less than 5-acres (see *comments* on Minimum Lot Area), and; (2) the kennel must 200 feet from any Dwelling Unit other than the Owner's and at least 50 feet from Contiguous property lines standards (see *comments* on Setbacks). The UZC, Art.V-D.6., allows the MAPC to make one or more modifications to the Supplementary Use Regulations in the form of a recommendation to the Governing Body for final action.

RECOMMENDATION: The proposed Conditional Use would not pose a land-use conflict with the existing surrounding agricultural uses. However, the proposed kennel could pose a conflict with existing and any future residential development. An increase of vehicular traffic associated with the kennel is probable, although the 12-dog maximum would keep the increase minimal. Typically a primary issue with kennels is the noise generated by anxious dogs being dropped off and left at the kennel. A 12-dog kennel is a relatively small kennel (two over the maximum of 10-dogs) and with a good design the noise generated by the dogs could be less an encroachment to the neighbors than the typical larger kennel.

Planning Staff does not see indications of this area transitioning to urban scale residential in the foreseeable future. Therefore, based on the information available prior to the public hearing, staff recommends the County Conditional Use for a Boarding/Breeding/Training Kennel be APPROVED subject to the following Conditions:

- (1) The Conditional Use for a Boarding/Breeding/Training Kennel shall comply with all applicable federal, state, and local requirements including the UZC’s Supplementary Use Regulation standards, except with the following modifications to the Supplementary Use Regulation standards; (a) The site shall be 4.55-acres and allow outdoor runs and training areas as shown on an approved site plan, which includes the required screening or landscaping providing the desired Screening effect within the first growing season following installation and throughout the year every year thereafter, and; (b) The indoor training portion of the kennel shall be allowed in the existing 40-foot {x} 60-foot accessory structure, which is located approximately 140 feet west from the east single-family residence and 34 feet west from the nearest, east Contiguous property line. If the modifications are approved the MAPC’s recommendation will be forwarded to the County Commission for final action.
- (2) The number of dogs to be boarded shall not exceed 12 dogs at any one time. No more than one dog shall be trained outdoors at any one time on either of the outdoor training areas.

- (3) The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian.
- (4) Cleaning of the boarding kennel facility shall be performed as often as necessary to maintain sanitary conditions. A suitable method of eliminating excess water from animal housing facilities shall be provided as approved by Environmental Services. Interior surface materials shall be constructed of non-porous materials that are impervious to moisture.
- (5) Sufficient quantities of food and water shall be provided to keep the dogs in good physical condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.
- (6) All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The boarding kennel shall be maintained in a sanitary manner as required by applicable codes. All solid waste generated by the boarding, breeding and training kennel must be removed from the site and shall not be discharged into the residential sewage lagoon on-site or any other on-site disposal system. Contact MABCD to discuss their solid waste disposal plans.
- (7) The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
- (8) The applicant shall obtain all applicable permits including, but not limited to building, health and zoning.
- (9) The boarding facility shall be open to the unannounced inspection by Code Enforcement personnel during reasonable daylight hours to insure continued compliance with the above requirements.
- (10) The Conditional Use is permitted a 32 square-foot sign on the 29th Street North frontage, as approved by County Permits and Code.
- (11) The property shall be developed and maintained in accordance with the site plan approved by the Planning Director, showing screening, all buildings, parking, and other applicable features of the site.
- (12) If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the surrounding area: The site is located in RR zoned unincorporated rural Sedgwick County. Most of the area is used for agriculture. The site is one of eight single-family residences built (1990-1998) on 4.5-acre lined up on the south side of 29th Street North, starting west of 215th Street West. There are another six large tract single-family

residences or farmsteads (built 1945-1998) located within a ¼-mile of the site. A subdivision like cluster of large tract single-family residences is located approximately ½-mile south of the site.

- (2) The suitability of the subject property for the uses to which it has been restricted: The site could continue to be used for a single-family residence.
- (3) Extent to which removal of the restrictions will detrimentally affect nearby property: Potential noise and odors generated by kennel dogs could have a negative impact on the nearest residences abutting the east and west sides of the site. The proposed conditions should mitigate those impacts.
- (4) Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The '2030 Wichita Functional Land Use Guide of the Comprehensive Plan' identifies the site as Rural. The Rural category encompasses land outside the Wichita and small cities' growth areas. It is intended for agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County and predominately large tract single-family residences of two or more acres with provisions for individual or community water and sewer services.

A Boarding/Breeding/Training Kennel located within the RR zoning district, can be considered for a Conditional Use, per the UZC's Supplementary Use Regulation standards; Art.III, Sec.III-D, 6-k. The site appears to partially conform to those standards. As noted the screening requirements must be met. Also the applicants are requesting modification of the Supplementary Use Regulation standards: (1) the 5-acre minimum lot area and the prohibition of outdoor runs and training areas on a site less than 5-acres (see *comments* on Minimum Lot Area), and; (2) the kennel must be 200 feet from any Dwelling Unit other than the Owner's and at least 50 feet from Contiguous property lines standards (see *comments* on Setbacks). The UZC, Art.V-D.6., allows the MAPC to make one or more modifications to the Supplementary Use Regulations in the form of a recommendation to the Governing Body for final action.

- (5) Impact of the proposed development on community facilities: Because of the relatively small size of the kennel, 12 dog maximum at any one time, impact on community facilities should be minimal.

GOOLSBY recused himself from the item citing a conflict of interest.

BILL LONGNECKER, Planning Staff presented the Staff Report. He said he has received calls expressing concerns about noise and depreciation of property values.

FOSTER asked how waste would be dealt with off- site.

LONGNECKER said the applicant has proposed a separate septic system for this use which will need to be approved by the Metropolitan Area Building and Construction Department (MABCD).

FOSTER asked if there were any limitations on breeds allowed.

LONGNECKER suggested talking to the applicant. He said the applicant trains K-9's for police and emergency medical services. He said he did not feel it was appropriate to put restrictions on breeds.

FOSTER asked if the addition would warrant concerns regarding accessory use structure size. He asked if there were some maximums on square footage of accessory structures.

LONGNECKER said he didn't believe there is a maximum square footage on accessory structures other than keeping them out of setbacks and any requirements outlined in the Supplemental Use Regulations.

FOSTER said the signage size request is four times what is allowed. He asked if staff was concerned about that.

LONGNECKER said in the County, 32 square feet is the maximum. He said the applicant had e-mailed a smaller sign to him. He said he will let the applicant address the sign.

G. SHERMAN asked if the dogs breed and if they all have three to four puppies isn't it possible to have 20-30 dogs at the location.

LONGNECKER said he would let the applicant address the issue of breeding females.

HANK COCKING, 22215 WEST 29TH STREET NORTH said he believes this location is the best to block the view from every neighbor and the roadway. He said concrete walls inside and a concrete fence 4 ½ feet in height outside will also block any noise. He said he would also be okay with doing away with the conditional use permit if he sells the residence. He also mentioned that there will not be a sign by the road, but a rock by the office that says "Midwest Dog Center."

WARREN asked if the dogs will be confined indoors in the evenings.

COCKING said yes. He said the kennel is heated and air conditioned and the dog's would be inside. He mentioned that there is a sliding door on each kennel so the dog's can go in and out and the small outside area by each kennel is the only outside area the dogs have unless he is exercising or working them in the outside area.

G. SHERMAN asked about the request for a 32 square-foot sign.

LONGNECKER explained that he did not have the specifics about the requested sign size so he put the standard in the Staff Report. However, the signage being requested is as described by the applicant. He added that hours of operation will be from 7:30 a.m. until sunset so at night the dogs will be inside.

DENNIS WOODWARD, 2211 WEST 29TH STREET NORTH said he is the newest and nearest neighbor. He said their main concerns are about noise, odor and the temperament of the animals and the type of training the applicant intends to do. He said he knows this is a necessary evil and it has got to be done somewhere but that doesn't help him and his wife and their concern about their grandchildren, garden, etc. He said they would like some assurance that the dogs will be restricted if they are trained to be aggressive. He said he wants safety first. He mentioned that there were no fences which is fine because he does not want fences, that is not why people move out into the country. But, he wants

assurance that the dogs are going to be contained to the applicant's property. He said he doesn't understand why staff would recommend a 32-foot sign if the applicant doesn't want it or need it. He said he doesn't want a 32-foot sign in front of his neighbor's house. He said the 4 ½-foot fence will help with the noise, but with 12 dogs or more and no telling how many puppies, the dogs have the potential to be loud and annoying. He mentioned appraisal of his property and that the number of potential buyers will be cut down when people look at a property next to a kennel. He said that will be in 2 years when he and his wife are ready to retire and sell the property. He said one of the reasons they bought this property was for the investment and that they hoped to make money to help with their retirement. He said this is nothing personal but he and his neighbors have concerns and someone has to speak to those.

J. JOHNSON asked about the other lot owners and if all the lots were sold.

WOODWARD mentioned his neighbors by name and said he is the newest neighbor; his neighbors were all there before him.

COCKING said he does not want to put a sign on the road, just a landscape rock as he explained. He said as far as safety is concerned, the gates will be locked and there will be a security system for fire and theft. He said it will be almost impossible for dogs to escape. He said as far as if a dog has aggressive issues, it will be on a leash and he will be the one training it for obedience. He said this is a first class facility that has been well thought out and made with good materials.

DENNIS clarified items not listed in the Staff Report which were 7:30 a.m. to sunset for hours of operation; that the conditional use permit ends when the applicant sells the property and does not go with the land; and elimination of the 32-foot sign.

COCKING verified that he was okay with the conditions as stated.

FOSTER asked for confirmation that the 4 ½-foot fence was enough to contain the dogs.

COCKING said he believed so and because the fence was partially made of cinder block, the German Shepherds could not scale it. He added that there will be an additional 1.5-foot fence on top of the cinder block. He mentioned that the concrete fencing was designed to cut down on the noise and to eliminate the dogs seeing each other which will cut down on any agitation.

FOSTER asked if the training area was fenced.

COCKING said no, not the outside area.

KLAUSMEYER asked if the dogs will be on leashes when they are outside in the open training area.

COCKING said he will keep any aggressive dog on a leash so it will not get away from him. He said he teaches obedience so if he needed to take the animal off leash he could utilize the indoor facility.

MOTION: To approve subject to staff recommendation and amended conditions discussed at this meeting which were 7:30 a.m. to sunset for hours of operation; that the conditional use permit ends when the applicant sells the property and does not go with the land; and elimination of the 32-foot sign.

KLAUSMEYER moved, **B. JOHNSON** seconded the motion.

MCKAY asked about the size of the decorative sign.

COCKING said the decorative rock sign would be approximately 20 square feet.

DENNIS clarified that the sign would be placed back by the kennel itself.

MOTION AMENDED to include the 20 square-foot decorative rock sign, by the kennel.

G. SHERMAN said there were various restrictions provided by the UZC which were: a minimum of 5 acres (this is 4.55 acres); at least 200 feet from the nearest neighbor (this is 140 feet from the nearest neighbor); 50 feet from the property line (this is 34 feet from the property line) and these seem like a whole lot of reductions from the standards to him. He said he would not want to be living that close to a kennel with this many potential dogs.

WARREN said he had some of the same concerns when this application came up, but after looking at the configuration, the design goes a long way to take care of those concerns. He said he appreciates the neighbor's concerns but he doesn't see them as being a major issue.

The **MOTION**, as amended, carried (9-2-1). **FOSTER** and **MILLER STEVENS** – No. **GOOLSBY** – Abstained.

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8. **Case No.: CON2013-00013** – Oscar and San Juana Gomez (owners) request a City Conditional Use for an Accessory Apartment in SF-5 Single-Family Residential zoning on property described as:

Lots 19 and 20, Block 7, Jones Park Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicants request a Conditional Use for an “accessory apartment” on property zoned SF-5 Single-family Residential, the site is located on the west side of north Fairview and north of 33rd Street North (3415 N. Fairview). The property is currently developed with a single-family residence, built in 1940, and a detached garage on the 50 by 190-foot site. The applicant proposes adding a second story accessory apartment above the existing two-car garage at the rear of the site.

All properties immediately surrounding the site to the north, south and east are zoned SF-5 and developed with a mixture of single-family residences, duplexes, churches and manufactured housing, some vacant lots exist in the immediate area. Abutting the site to the west is drainage ditch; further west is LC Limited Commercial zoned vacant land and a commercial development. Southwest of the site, across 33rd Street North and the drainage ditch, is an MF-29 Multi-family Residential zoned subdivision developed with single-family residences.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines an “accessory apartment” (Art. II.Sec. II-B.1.b) as a dwelling unit that may be wholly within, or may be detached from a principal single-family dwelling unit. Accessory apartments are also subject to supplementary use regulation Art. III.Sec.III-D.6.a (1) a maximum of one accessory apartment may be allowed on the same lot as a single-

family dwelling unit that may be within the main building, within an accessory building or constructed as an accessory apartment; (2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; (3) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold as a condominium and (4) the water and sewer service provided to the accessory apartment shall not be provided as separate service from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services.

The SF-5 zoning district property development standards call for a minimum rear setback of 20 feet for principal structures; however, accessory structure rear building setback (Sec. III-D.7.e(1)) shall be at least ten feet from the centerline of any platted or dedicated alley, and if no alley exists, then five feet from the rear lot line; accessory structures may be within three feet of a side lot line if on the rear half of the property. Accessory structures may not utilize more than one-half of any required rear yard, and shall not exceed 60 percent of the allowable height limit for the zoning district unless the accessory structure conforms to principal structure setback requirements. The SF-5 zoning district maximum height is 35 feet, 60 percent of which is 21 feet. The UZC parking standards require one off-street parking space per single-family residence and one per accessory apartment. The submitted site plan appears to conform to UZC requirements, except that the proposed building height is unknown.

CASE HISTORY: The site was platted as Lots 19 and 20, Block 7 of the Jones Park Addition North Wichita in 1920.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residences, manufactured housing, vacant
SOUTH:	SF-5, MF-29	Single-family residences
EAST:	SF-5	Single-family residences, duplex, manufactured housing, church
WEST:	LC	Drainage ditch, vacant, commercial

PUBLIC SERVICES: The property is serviced by all publicly supplied municipal services. North Fairview is an unpaved, local street at this location with sixty feet of right-of-way.

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

RECOMMENDATION: The immediate neighborhood has a mixture of land uses and housing types. This lot is deeper than average city lots, and therefore has enough room to accommodate the accessory apartment and associated parking. Existing tree growth on the site partially screens the accessory apartment from neighboring properties. Based on information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the following conditions:

1. The Conditional Use permits one single-family accessory apartment on the site. The site shall be developed and maintained in general conformance with the approved site plan, the approved elevation drawing, and in conformance with all applicable regulations, including but not limited

to: local zoning, including Article III, Section III-D.6 .a.(1)-(4); building, fire and utility regulations or codes.

2. The applicant shall submit an elevation drawing to be approved by planning staff, demonstrating dimensions and exterior materials.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All properties immediately surrounding the site to the north, south and east are zoned SF-5 and developed with a mixture of single-family residences, duplexes, churches and manufactured housing, some vacant lots exist in the immediate area. Abutting the site to the west is drainage ditch; further west is zoned vacant land and a commercial development. Southwest of the site, across 33rd Street North and the drainage ditch, is an MF-29 zoned subdivision developed with single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned SF-5 which permits the existing single-family residence. The property could continue to be used for one single-family residence; the depth of the property easily accommodates an accessory apartment and the additional required parking space.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby properties. The accessory apartment site is well screened from neighboring lots. The conditions of approval should minimize any anticipated detrimental impacts.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for “urban residential.” The “urban residential” category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units.
5. Impact of the proposed development on community facilities: If this request is approved, the site is served by municipal services that are able to accommodate projected demand created by this request.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

NON-PUBLIC HEARING ITEMS

9. First Draft of Bylaws Changes.

First draft of bylaw changes (new language shown in italics).

SECTION 6. Quorum. A quorum of the Commission shall be required to conduct official business. A quorum shall consist of a majority of the members of the Commission appointed and qualified at any given time; *provided however, a commissioner who has submitted their resignation in writing to the appropriate governing body, or the Chairman, Vice-Chairman or Secretary of the Commission, shall not be counted for purposes of the quorum.* The affirmative vote of a majority of those members present and voting shall be sufficient for the passage of all motions; except that the adoption of or amendments to the Comprehensive Plan, the Unified Zoning Code text, and the Subdivision Regulations shall require a majority of all members. In the absence of a quorum at any meeting, the presiding officer may adjourn the meeting to a specific time, date and place, which shall be publicly announced.

*A member or members may participate by speakerphone and be counted as present for purposes of the quorum when: 1) the Chairman determines participation by the member(s) is due to emergencies such as, but not limited to, inclement weather or personal situations which prevent attendance by the member in person; or 2) a member has provided sufficient prior notice to the Secretary so that the agenda may show the proposed participation by speakerphone. **A member cannot request to participate by phone, except for emergencies, more than two times in any twelve month period.***

*Any applicant, person in the notice area, or person who would be aggrieved by an adverse decision, or any member of the Commission, may object to taking action on any item without ~~all~~ **a quorum of members in attendance in person**, in which case the item shall be deferred until a date certain. Communication between the member(s) attending by speakerphone, members present, and persons speaking from the podium must be clearly audible.*

ROBERT PARNACOTT, ASSISTANT COUNTY COUNSELOR referred to the draft of the revised Bylaws discussed as the last Planning Commission Meeting.

FOSTER said he seemed to recall from the minutes, if someone is serving and they resign, they will continue to serve until someone is appointed.

B. JOHNSON (Out @3:15 p.m.)

PARNACOTT said under the Common Law Rule followed in Kansas a person does continue to serve until a replacement is appointed and qualified. He said in this case what staff is intending to do is if someone resigns and moves away or for some other reason is unable to attend meetings, that person is not available to count for the quorum.

FOSTER asked if the Bylaws need to be revised anywhere else in addition to this.

PARNACOTT explained the current quorum requirement which was a majority of the members of the Commission appointed and qualified at any given time. He said right now if someone resigns from the

Commission, they are still appointed and qualified and continue to serve for the purposes of counting a quorum until the resignation has been accepted by the governing body.

FOSTER said until the governing body acts, this doesn't apply so what's the purpose of the reference to the Chairman, Vice Chairman and Secretary.

PARNACOTT said even though a Commissioner who has resigned is technically still serving, they will not be counted for the purposes of a quorum.

FOSTER said since the Chair, Vice Chair and Secretary have no standing in effecting a resignation, why do they even have to be mentioned.

G. SHERMAN clarified that a Commissioner can submit their resignation to the Chairman, Vice Chairman and/or Secretary.

FOSTER said he understood that.

PARNACOTT said for the purposes of a quorum, staff does not have to wait for the governing body to accept the resignation.

FOSTER said there seems to be a gap when they are arbitrarily taking someone out of the quorum when their resignation hasn't been officially accepted.

PARNACOTT said the Commission, through its Bylaws, can set its quorum requirements or how the quorum is calculated.

FOSTER asked if there were any court cases that address this issue.

PARNACOTT said the Commission has adopted Roberts Rules of Order where he believes there is a provision that addresses this and indicates that the Commission may set the quorum unless they are restricted by State Statute or the governing body. He said the Commission was created by Resolution and has the ability to determine how the quorum is calculated through the Bylaws process.

MILLER said it is not arbitrary if a Commissioner gives staff something that says they have resigned.

MITCHELL said he did not like the provision for appearing by telephone. He said he thinks Commissioners need to be at the meetings in person.

G. SHERMAN said he agrees with that too, but he believes the last paragraph mitigates that if the applicant says they want all Commissioners in attendance in person.

DENNIS said he understands Commissioner Mitchell's concern but he has seen the telephone work on a number of occasions. He said this proposed change specifies the requirements to use the option and gives someone an out if an applicant doesn't like the telephone option.

PARNACOTT said the Commission needs a two-thirds majority vote to amend the Bylaws. He said the Commission does not need to adopt all of the proposed changes and could adopt only the first paragraph and leave off the speaker phone portion.

MCKAY suggested leaving the paragraphs related to the telephone completely out of the proposed changes and just adopt paragraph one.

MOTION: To adopt paragraph one only and eliminate paragraphs two and three of the proposed Bylaws changes.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (11-0).

Other Matters/Adjournment

The Metropolitan Area Planning Commission adjourned at 3:25 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