

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

July 25, 2013

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, July 25, 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; Don Klausmeyer; John W. McKay, Jr. (Out (@2:15 p.m.)); Debra Miller Stevens; M.S. Mitchell; Carol Neugent; Don Sherman and Chuck Warren. Joe Johnson was absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney, Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. Approval of the June 20, 2013 MAPC meeting minutes.

MOTION: To approve the June 20, 2013 meeting minutes, as amended.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (11-0-2).
NEUGENT and **D. SHERMAN** – Abstained.

2. Approval of the July 11, 2013 MAPC meeting minutes.

MOTION: To approve the July 11, 2013 meeting minutes, as amended.

MCKAY moved, **KLAUSMEYER** seconded the motion, and it carried (9-0-4).
ANTHIMIDES, GOOLSBY, NEUGENT and **D. SHERMAN** – Abstained.

3. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

There were no Subdivision items.

4. **PUBLIC HEARING – VACATION ITEMS**

3-1. VAC2013-00022: City request to vacate a platted easement, generally located southeast of Woodlawn Boulevard and 21st Street North, southeast of Bramblewood Street and Rock Hill Lane.

APPLICANT/AGENT: Manuel Corporation, c/o Robert Vincze (applicant/owner) Poe & Associates, c/o Tim Austin (agent)

LEGAL DESCRIPTION: Generally described as vacating the platted 10-foot wide utility easement that runs parallel to the west side (in referenced Lot 2) of the common line of Lot 2, Block 2, and Reserve A, all in the Northborough 3rd Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located southeast of Woodlawn Boulevard and 21st Street North, southeast of Bramblewood Street and Rock Hill Lane (WCC #2)

REASON FOR REQUEST: No utilities located in easement

CURRENT ZONING: The site and all abutting and adjacent northern, eastern and western properties are zoned MF-29 Multi-Family Residential (MF-29) and the abutting southern properties are zoned SF-5 Single-Family Residential (SF-5).

The applicant proposes to vacate the platted north-south 10-foot wide utility easement that runs parallel to the west side of the common line of Lot 2, Block 2 and Reserve A, all in the Northborough 3rd Addition. There are no utilities in the subject easement. The north most portion of the subject easement intersects with a platted a Continental Pipeline setback; the Continental Pipeline setback will remain. An associated Lot Split LSP2013-00013 split Lot 2, Block 2, Northborough 3rd Addition into two parcels; approved July 2, 2013. The Northborough 3rd Addition was recorded with the Register of Deeds March 25, 1987.

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 portion of the platted utility easement.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time July 3, 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 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) Abandonment or relocation/reconstruction of any/all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. Provide approved project numbers or approval by the franchised utility representatives to Planning prior to the case going to City Council for final action.
- (2) Provide Planning with a legal description of the vacated utility easement on a Word document, via e-mail. This must be provided to Planning prior to the case going to City Council for final action.
- (3) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County

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

SUBDIVISION COMMITTEE’S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Abandonment or relocation/reconstruction of any/all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. Provide approved project numbers or approval by the franchised utility representatives to Planning prior to the case going to City Council for final action.
- (2) Provide Planning with a legal description of the vacated utility easement on a Word document, via e-mail. This must be provided to Planning prior to the case going to City Council for final action.
- (3) 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, **MCKAY** seconded the motion, and it carried (13-0).

PUBLIC HEARINGS

G. SHERMAN recused himself from the item and left the bench.

5. **Case No.: CUP2013-00018 (Deferred from 7-11-13)** – Simon Property Group, LP, c/o Michael Payton (owner/applicant) request a Major Amendment for the LC Limited Commercial zoned DP-12 to allow short term and seasonal outdoor retail sales, arts and crafts display and sales, farmer’s markets, nursery and garden equipment display and sales, display of cars, RVs, boats, farm equipment and motorcycles, outdoor recreation and entertainment, and food and beverage sales associated with all outdoor events on property described as:

Lot One (1) Kellogg Mall Addition, Sedgwick County, Kansas.

BACKGROUND: The applicant is request an amendment to Parcels 1, 1a, 2 and 5a, located in Lot, 1, Kellogg Mall Addition, all in the LC Limited Commercial (LC) zoned DP-12, the Kellogg Mall Community Unit (CUP). The DP-12 is located on the west side of Rock Road, between Kellogg Street/US 54 (south side), Douglas Avenue (north side), and on the east side of Town East Mall Drive (west side).

Per the Unified Zoning Code (UZC), outdoor business promotions are allowed in the LC district for up to 48 hours per month provided a license is obtained as required by City Code Section 3.04.010, an subject to five other conditions dealing: with food handling licensing; no admission fee is to be charged; the outdoor promotion or sales activity may not occupy any part of the required off-street parking for the principal use, and; all electrical connections, temporary structures, etc., shall be in compliance with City Code. The applicant is requesting approval to conduct temporary outdoor retail sales that are in “good taste and consistent with the neighborhood and the property...” for a total of 60 days per year. The proposed activities include: art and craft shows; lawn and garden and landscape exhibits and retail sales; farmers markets; the display of motorized vehicle vehicles, including boats, RV’s, automobiles, farm equipment and motorcycles, and; the associated sale of food and beverages.

The subject site occupies most of the LC zoned Towne East Mall development. Development in the regional drawing Mall includes, but is not limited to, Dillards, JC Penny, Sears, fast food restaurants, full service restaurants (DER), a bank a standalone tire store and other retail businesses. There are no outdoor sales or displays on the Mall site. A SF-5 Single-Family Residential (SF-5) zoned single-family residential development is located north of the site, across Douglas Avenue, as well as some B Multi-Family Residential (B) apartments and MF-29 Multi-Family Residential (MF-29) zoned townhomes. East of the site, across Rock Road, there is an SF-5 zoned single-family residential development and some LC zoned apartments, fast food restaurants, small retail and office strips. West of the site, across Town East Mall Drive is the PUD Planned Unit Development (PUD) zoned Ford dealership and LC zoned offices, a Target retail store, full service restaurant, and a bank. South of the site is Kellogg Street/US 54 Highway.

The parking for Towne East that is located in its south and west areas are located the furthest from residential development. These areas present possible sites for the proposed temporary outdoor uses. Proximity to SF-5 zoned developments makes the other parking areas less probable sites.

CASE HISTORY: A portion of the site was rezoned from BB Office to LC Light Commercial February 5, 1963. The rest of the site was rezoned from AA One-Family Residential to LC Light Commercial July 21, 1964; Z-0427 & Z-0557. DP-12 was approved June 28, 1967. The Kellogg Mall Addition was recorded with the Register of Deeds June 18, 1973. DAB II considered this request at their July 1, 2013, meeting. There were many people from the neighborhood that attended the meeting, with most of them expressing concerns about the proposed activities and their locations. The DAB deferred a recommendation on the request, instructing the applicant to meet with the neighbors to attempt to find a common resolution on the proposed activities. DAB II will hear the request at their August 5, 2013, meeting. Since the July 1, 2013, DAB II meeting the applicant and the neighbors have met and the staff report reflects some agreed standards. The MAPC deferred making a recommendation on the request at their July 11, 2013, meeting, voting to consider the request at their July 25, 2013, meeting.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5, B, MF-29	Single-family residential, apartment, townhouses
SOUTH:	Unzoned	Kellogg Street/US 54 Highway
EAST:	SF-5, LC	Single-family residential, apartment, retail, fast food restaurant,
WEST:	PUD, LC	Outdoor vehicle sales, big box retail, bank, offices, full service restaurant

PUBLIC SERVICES: All municipal services are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Regional Commercial” development. The Commercial Location Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” The applicant has proposed multiple temporary activities/uses that can be considered in the LC zoning district, but are not permitted by right or/and are not permitted in the CUP overlay DP-12.

The UZC requires multiple Conditional Uses for the proposed temporary outdoor uses in the LC zoned site. The CUP does not permit the proposed temporary outdoor uses. An amendment to the CUP substitutes for the required Conditional Use. Approval will introduce new uses to the area.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Locating the proposed temporary outdoor uses in the south and southeast portion of the site would appear to not adversely impact the Mall’s required/principle parking areas and have the least amount of negative impact to the neighborhood.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request for an amendment to DP-12 be **APPROVED**, with the following conditions:

- (1) Temporary outdoor business promotions and/or sales that include associated food and beverage sales may be located in the portion of Parcel 1, 2 (Sears Parcel 2) and 5a, located along Kellogg Street/US 54, Town East Mall Drive and Douglas Avenue as shown on an approved site plan.
- (2) The temporary outdoor display, but not sales, of motorized vehicles, including boats, RVs, automobiles, farm equipment and motorcycles, including car shows and the associated sale of food and beverages, shall be permitted as shown on an approved site plan in the portion of Parcel 1, 2 and 5a, located along Kellogg Street/US 54, Town East Mall Drive and Douglas Avenue as shown on an approved site plan.
- (3) A seasonal nursery shall be allowed per the UZC Sec.III-D.6.z., as shown on an approved site plan, shall be located in the south, southwest, and west portions along Kellogg Street/US 54 and Town East Mall Drive, of Parcel 1, 2 (Sears Parcel 2) and 5a. The seasonal nursery would operate from April through June, seven days a week, 8AM – 7PM/dusk, Monday – Saturday, and 9AM – 7PM/dusk, Sunday.
- (4) No temporary equipment or buildings shall be located within any setbacks or easements.
- (5) No outdoor lighting shall be added.
- (6) A Farmer’s Market shall be allowed per the UZC Sec.III-D.6jj., and located in the portion of Parcel 1, 2 and 5a, located along Kellogg Street/US 54, Town East Mall Drive and Douglas Avenue as shown on an approved site plan.

- (7) Restroom facilities for employees may be provided by agreement with a permanent use in the center upon approval of the MABCD. Portable bathroom facilities are allowed, as approved by MABCD.
- (8) All approved temporary outdoor business promotions and/or sales shall be on paved surfaces.
- (9) No outdoor speakers or amplifiers shall be allowed.
- (10) Signage shall be per DP-12.
- (11) The applicant shall provide a parking analysis to ensure parking remains in compliance with the parking standards of the UZC.
- (12) Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
- (13) The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
- (14) The applicant shall secure all required permits and inspections, including, but not limited to, a Community Event Permit and temporary building permits from MABCD for each of the approved temporary outdoor business promotions and/or sales.
- (15) The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.
- (16) If the Zoning Administrator finds that there is a violation of any of the conditions of the amendment to the CUP, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the amendment to the CUP is null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The subject site occupies most of the LC zoned Towne East Mall development. Development in the regional drawing Mall includes, but is not limited to, Dillards, JC Penny, Sears, fast food restaurants, full service restaurants, a bank a standalone tire store and other retail businesses. There are no outdoor sales or displays on the Mall site. A SF-5 Single-Family Residential (SF-5) zoned single-family residential development is located north of the site, across Douglas Avenue, as well as some B Multi-Family Residential (B) apartments and MF-29 Multi-Family Residential zoned townhomes. East of the site, across Rock Road, there is an SF-5 zoned single-family residential development and some LC zoned apartments, fast food restaurants, small retail and office strips. West of the site, across Town East Mall Drive is the PUD Planned Unit Development (PUD) zoned Ford dealership and LC zoned offices, a Target retail store, full service restaurant, and a bank. South of the site is Kellogg Street/US 54 Highway.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC, with a CUP over lay, DP-12 which permits: a regional shopping center; restaurants; theaters; automobile service and parts sales; including tire and battery sales (not including new or used car sale or body and fender shops); drive in banks; offices; service stations; motel; private clubs; medical clinics; laboratories, and; parking. The regional shopping center, Towne East Mall, is the anchor of all the permitted uses.

- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:**
The proposed listed outdoor retail sales and uses are temporary or seasonal in their duration. The proposed listed outdoor retail sales and uses are intended to draw more traffic to the mall. The conditions of the amendment to the CUP are intended to minimize the negative impact on surrounding businesses, which may benefit from the additional vehicular traffic.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Regional Commercial” development. The Commercial Location Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” The applicant has proposed multiple temporary activities/uses that can be considered in the LC zoning district, but are not permitted by right or/and are not permitted in the CUP overlay DP-12.

The UZC requires multiple Conditional Uses for the proposed temporary outdoor uses in the LC zoned site. The CUP does not permit the proposed temporary outdoor uses. An amendment to the CUP substitutes for the required Conditional Use. Approval will introduce new uses to the area.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

- (5) **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for Code compliance and increase in traffic.

BILL LONGNECKER, Planning Staff presented the Staff Report.

FOSTER commented that the diagram for Town West Square clearly spells out where the sites for outdoor activities will be located; however, this case refers to “probable” sites. He asked if that could be pinned down better because “probable” could be anywhere on the site.

LONGNECKER indicated that the applicant requested more flexibility at this location so some of the activities could be held closer to the mall. He said use of parcels 1, 2 and 5a on Lot 1 Kellogg Addition is what is being requested. He said they have scratched parcel 1a which is generally used for signage. He commented that the applicant will want to keep the permanent tenants at the mall happy and not put the temporary events ahead of them. He added that many of the events will be seasonal including the nursery, farmer’s market and auto display. He added that there will be no auto or vehicle sales allowed.

FOSTER asked about the limits as far as timing. He said there are limits on nursery sales, what about the farm and art market, should a time limit be put on that.

LONGNECKER stated that the time limits for farmers markets are contained within the UZC Supplemental Use Regulations, 3d 6jj which states no more than five calendar days per month, April – October.

FOSTER referenced Mr. Payton’s e-mail and asked how the neighbors concerns can be incorporated into the case to insure those objectives are met.

LONGNECKER commented that the Commission has the discretion to require other conditions as part of the approval process. He referred Commissioners to “hand outs” which were e-mails received in opposition as well as one for the request.

DENNIS asked why the locations in the diagram (site plan) weren’t specifically designated as being part of parcels 1, 2 and 5a as referred to in the Staff Report.

LONGNECKER commented that the locations showed as probable sites are portions of and located within parcels 1, 2 and 5a. He reiterated that the applicant had requested flexibility as far as locations for possible events.

DENNIS commented that the site plan doesn’t follow the wording in the Staff Report. He mentioned parcels 7a and 11 and asked why they are designated on the site plan.

LONGNECKER said staff can make that correction.

MIKE PAYTON, MALL MANAGER, SIMON PROPERTY GROUP, INC., TOWN EAST AND TOWN WEST SQUARE MALLS, 7700 EAST KELLOGG commented that they have had extension discussions with the neighborhood which has turned out to be a good thing. He commented that the CUP limits outdoor events to 2 days. He said their basic objective is to have a reasonable opportunity to have outdoor events like Target or Wal-Mart in LC zoning to level the playing field. He stated that one of the areas they have not been good at is addressing the physical condition of the berm on the north side of the building. He said they have made a commitment to address that; however, he can’t tell the Commission exactly what that is going to look like because they know they need to develop a landscape plan. He said they have made a clear commitment to the neighborhood to address that situation. He also mentioned meeting with the neighborhood groups periodically to give them updates and develop better communication. He said they have asked that 3 parcels of the CUP be amended to allow the outdoor uses. He said they would like flexibility and mentioned that when Toyota was rolling out their new models last year they approached Simon Properties and asked for a demonstration area near the mall entrance. He reemphasized that he has to be accountable to the 180 customers in the mall itself as to how the parking is used. He said their first purpose is to maximum retail sales in the shopping center. He commented that Town East is one of Simon’s leading properties in the central region. He mentioned that in 2009 they did some significant remodeling and renovation to the facility and as a result several national chains are looking at Wichita as a possible location, which they believe is indicative of the quality of the property. He said it is not in their interests to adversely affect the performance of the retailers located in the mall. He concluded the overview and asked if there were any questions.

GOOLSBY asked about a timetable for improving the berm.

PAYTON said they need to put together a good landscape plan. He said the berm has drainage issues. He added that right now is not a good time to plant trees that they were looking at next spring. He said they have also made a commitment to plant some type of hedge along the north side of the berm. He mentioned that his predecessor trimmed the bottom of all the fir trees which allowed any trash to blow right through the area. He said they would like to solve that by installing a hedge. He said he believed it was reasonable to expect that they would install the landscaping in phases over a 2-3 year period. He said trees will be addressed as they need to be replaced.

DENNIS commented that right now Simon Properties has a landscape requirement. He asked what assurance the Commission has that they will comply in the future since they haven't been complying in the past.

PAYTON said their assurance was the painful recognition that they are currently not in compliance. He said the Commission can be assured that the situation will be addressed. He said as a company they recognize the need and the code requirement.

KLAUSMEYER asked about a time period on the landscape requirements.

PAYTON said he didn't want to be evasive or duck the issue, but the question comes down to the scope of what they decide to do. He said there are multiple issues with the berm; it is not just a matter of planting shrubs and trees. He mentioned the drainage and water ponding issues and said they need to come up with a landscape plan they can live with. He said it would be easy to drop \$75,000 -\$100,000 on landscaping. He said they want something that will work for the neighborhood and mentioned that he had no problem taking any proposed plan to the Rockwood HOA for review.

KLAUSMEYER asked if the applicant has hired a landscape architect. He asked about a schedule and said what the applicant was proposing was pretty abstract.

PAYTON replied no they have not hired a landscape architect at this time. He added that it would be reasonable to say that they could have some type of landscape plan in place 120 days from today, not to exceed 4 months.

GOOLSBY asked if the applicant would be open to the Commission including some kind of a time restriction on the landscaping in the approval conditions of the application since they are currently not up to code.

PAYTON responded that they are not sure what it is going to take to bring the landscaping up to code so he is hesitant and reluctant. He said they could just go out and plant trees but they want to come up with a program that is sustainable and aesthetically pleasing. He said they want a long-term plan. He said this is a 35 year old property and they have trees in place that are beyond their maturity. He said they need to establish a recycling plan when trees die. He said this last 18 months in Wichita anywhere there is greenery and trees there have been losses due to a combination of virus and drought.

GOOLSBY said he thought it would be reasonable that they were up to code within one year's time.

PAYTON said if that is the wishes of the Planning Commission that is their decision. However, he said their feeling is that they would like more flexibility. He said if it was just a matter of planting shrubs

and trees they could do that this afternoon. They want to come up with a landscape plan that will fix the code issue and address the trash on the north side of Douglas.

GOOLSBY commented that one year allows two planting cycles.

LARRY DUNTZ, 7524 ROCKWOOD, PRESIDENT, ROCKWOOD HOMEOWNERS ASSOCIATION said he has had numerous correspondence and letters from the 321 homes in Rockwood which is located north of Douglas. He said with a wide open parking lot and southerly winds during the summer when all these outdoor events are likely to occur, the neighbors feel the proposed rezoning is going to complicate the problem they already have. He commented that they had a good meeting with Mr. Payton and they think he understands their problem with trash. He commented that the HOA built a fence on the north side of Douglas that is constantly littered with trash that doesn't necessarily come from businesses in Town East; it could be someone throwing a cup out of their car. He said the neighbor's suggestion was that the applicant block the trash in some way. He said they asked the applicant for a fence on the south side of the street similar to what the HOA erected, but cost was an issue. He said the HOA liked the idea Mr. Payton mentioned in his e-mail regarding planting a reasonable shrub screen to prevent trash from blowing across Douglas. He said the hedge will be planted over a period of time. He said the heartburn he gets from the e-mails he has received is what he is hearing from the Commission and that is they can't seem to be able to get a commitment as to when that landscaping will be done. He said if the applicant is going to make an immediate change to the use of the property that will make an immediate change to blowing trash into the Rockwood neighborhood. He said many of the HOA members go out daily and pick up trash as well as people who mow that area. He said picking up the trash is not the issue, they would like to see it blocked on the south side of Douglas in some way with a shrub or fence. He concluded by saying that something needs to be put in the location or they will be compounding the situation by allowing more outdoor events. He suggested incorporating the applicant's commitments to the Rockwood HOA as a part of the conditions of the rezoning.

H.J. LEVIN, 7601 HUNTINGTON STREET said his backyard is on Douglas and he has a corner lot so he has two street sides to pick up trash. He said he has incorporated daily trash pickup as a part of his exercise routine. He mentioned that in 1975 Mr. Payton's predecessor defined the mall's trash as "merchant trash" which is the retailers at the mall. He said the neighbors were assured at that time the problem would be taken care of and the mall provided a maintenance worker to pick up trash on the north side of Douglas. He said that maintenance program has since been abandoned. He mentioned the street sweeper is employed first thing in the morning; but by that time (after the lot has been empty all night) the trash has already blown onto the north side of Douglas. He asked that the Commission put in a condition that has "teeth" in it. He asked if the Commission could put in a penalty if the applicant does not do what they say they are going to do. He mentioned the well meaning dialogue, but added that he has been there over 35 years since the mall has been there and he has not seen any significant improvement.

VICKI REED, 7400 E. PAGENT mentioned that the previous two speakers assumed that the requested rezoning is going to take place and she was hoping that it wouldn't take place. She said it sounds like it is a done deal with the Commission. She said she is particularly concerned about the northwest corner not being rezoned because it is the closest to the neighborhood. She said she is also concerned about noise and mentioned the annual "Race for the Cure" event which they are okay with but she is concerned about being awakened every weekend and on weekdays. She mentioned that the

neighborhood, especially Eastborough, was there long before the mall. She said all the applicant is talking about is probability and flexibility and that they are not sure what they are going to be doing, she is concerned about that. She concluded by suggesting that the parcels closest to Kellogg be used that would not affect the neighborhood as much.

DEE ZIEGERT, 7523 HUNTINGTON STREET said her backyard faces Douglas and that she has been at this location since 1998. She said the landscaping has been in poor condition and has not been attended to since she has lived there. She said she worries about this rezoning getting passed. She said she also worries about people who are attending events parking their cars in the neighborhood, trash and resale pricing of the homes in Rockwood. She said she agrees that this rezoning shouldn't even be considered and any events should take place in an area that is not surrounded by residential neighborhoods.

BUFF FARROW, 1301 N. WOODLAWN said he was born and raised in Rockwood and that his parents still lived there; however, he was present to speak as a business owner who owns the class A office park west of the mall for the last 25 years. He said they have made a conscientious effort to be a good neighbor by picking up trash and installing extra landscaping and have tried to be a positive asset to the neighborhood. He said they have also made extensive efforts to clean up the greenway and contribute to the tax base. He said they have concerns about not only the trash but portable signs on the north and west sides of the property. He said he will now be faced with trying to lease a class A property with port-a-potties lined up to the east of the property. He mentioned the extra traffic and noise which is not conducive to the class A office environment that they invested in and have spent a lot of time trying to improve. He said the other issue he is concerned about is crowd control. He said from a security standpoint entering the mall is one thing, but when you have indiscriminate numbers of people milling around in the parking lot it invites criminal mischief and is an untenable situation. He also mentioned that food will attract rodents that will probably end up on his property. He mentioned the residents' property values and their quality of life but added that he has invested a great deal in his business that is being jeopardized by having large congregations of people at the mall parking lot throughout the year. He said that is not what they signed up for. He concluded by saying that he understands Simon Property's objective and need for flexibility but when it impacts so many people in the north and west quadrant of the parking lot, he does not feel that should be accepted. He asked that the events be kept south along Kellogg.

FOSTER asked if there was a restriction to only allow events on the northwest parcel on weekends; how would that relate to Mr. Farrow's business.

FARROW said the tenants use the space on the weekends and added that wouldn't help with the trash and the criminal mischief. He referenced the annual breast cancer walk which the area supports and commented that it is still a major impact on the whole area. He said if events were allowed to go on all year round, even if they were not of that scale, it would have a negative impact on the area.

MARK KAHRs, 201 N. POST OAK ROAD said he was present as a resident of Rockwood and in his capacity as a State Representative of this area. He said he had a lot of constituents contact him about this proposal. He said serving in the Legislature he knows that this is all about the art of compromise and although he is against this application and would ask the Commission not to support a zoning code change at this point, as an alternative and as a minimum he would request no changes take effect that would affect Rockwood, the Douglas corridor or Town East Street. He said he did not understand

exactly what parcels are included in this proposed change. He asked if it was the entire property or just specifically parcels 1, 1a, 2 and 5a. He said it was confusing. He said there is ample space along the Kellogg corridor to allow these types of activities. He mentioned the annual cancer walk which the neighborhood supports; however, he added that it is very disruptive to the neighborhood with the traffic and people parking and walking in the neighborhood. He said having an event going on every weekend or on a daily basis would be very problematic and difficult for the residents to deal with. He asked that the Commission be very particular what changes would occur if this entire application as requested by the applicant is enacted. He concluded by asking that this not impact the Douglas corridor and most of Town East Parkway corridor as well.

PAYTON said he hopes the term “good neighbor” means something to everyone in the meeting. He said they are aware of the landscaping issue; however, he wanted to address their trash program in total. He mentioned that there are a number of parcels that have been talked about that they don’t control. He referred to the Super Buffet, Carlos O’Kelly’s, Genghis Grill and Target, who he indicated does not sweep their parking lot. He said he is a little uncomfortable being accused of being the bad guy with all the trash issues. He said for years they have picked up the trash on the north side of Rockwood. He said all mall tenant trash goes into a trash compactor or recycling container so there is no opportunity for trash to get onto the parking lot. He said where the trash comes from is people dropping stuff on the parking lot.

MOTION: To give the applicant one additional minute.

KLAUSMEYER moved, **D. SHERMAN** seconded the motion, and it carried (13-0). **G. SHERMAN** – Abstained.

He said they have made a continued effort to be responsible for the trash that is there and will continue to do that. He said that is their commitment whether or not they have a legal obligation, they want to be a good neighbor and work with the HOA’s to make sure they don’t create further problems. He said over 11 million people visit the shopping center a year. He said with the outdoor events there will probably be 25,000 people at the most so the impact on trash should be negligible.

WARREN said he has heard about events every weekend or on a daily basis, he asked with Mr. Payton’s experience with other shopping centers, does he have an idea of what they anticipate as far as frequency.

PAYTON replied that he would be surprised if they have more than 1 event a month, excluding November and December which they are not touching.

FOSTER mentioned concerns that the parcels have not been pinned down too well. He referred to the parcel on the northwest that he felt clearly stands out as transition to neighborhood and business to the west. He said he was interested in eliminating that parcel as part of this proposal; however, he asked that the parcels be pinned down by the applicant to help them and the neighborhood.

PAYTON said the parcel on the northwest originally housed theaters and a restaurant but it is now undeveloped. He said that would be the area they would use if they were to do a farmers market or garden center because that is the logical location to do that. He mentioned classic car shows which would be an opportunity for them to do something they have never done before. He said the northwest

corner is the biggest piece of the parking lot; however, if the Commission restricted the northwest corner to farmers markets and nurseries or garden centers they would be okay with that. He said they do not want to adversely impact the neighborhood.

MCKAY asked if the applicant owns the southwest corner.

PAYTON replied no the owner of Bradley Fair owns that parcel. He said recently a Longhorn Steakhouse opened on the site and he understands there is potential for a hotel at the location.

DIRECTOR SCHLEGEL asked staff to identify each parcel being requested in the application on the site plan aerial.

LONGNECKER referred to parcels 1 and 1a, parcel 2 and parcels 5 and 5a. He added that staff is asking for a revised site plan. He also mentioned that one of the items he neglected to put in the conditions of approval is that the applicant is asking for temporary, outdoor events a total of 60 days per year. He said the exception would be the farmers market and outdoor temporary nursery/garden center which would fall under the provisions of the Supplemental Use Regulations which would extend beyond 60 days.

There was considerable discussion concerning the site plan and parcels being requested by the applicant. There was also some confusion regarding the site plan versus how the parcels are referred to in the conditions of the Staff Report.

DENNIS suggested deferring the application until a better site plan is provided. He asked staff if 2 weeks was long enough.

LONGNECKER said 2 weeks was fine.

MOTION: To defer the application for two weeks.

ANTHIMIDES moved, **MCKAY** seconded the motion, and it carried (12-0-1). **G. SHERMAN** – Abstained.

MCKAY suggested that the landscaping be better defined in writing from a landscape architect.

DENNIS concurred and said the applicant hasn't been in compliance with the code on landscaping, the Commission now has promises that they are going to be in compliance but the Commission needs more information on the landscape plan and a more definitive site plan before this item comes back for a decision.

The **MOTION** was **amended** to include some type of definitive time line on the landscape plan and an updated site plan.

G. SHERMAN back on the bench.

6. **Case No.: CUP2013-00019 (Deferred from 7-11-13)** - Towne West Square, LLC, c/o Michael Payton (owner/applicant) request a Major Amendment for the LC Limited Commercial zoned DP-71 to allow short term and seasonal outdoor retail sales, arts and crafts display and

sales, farmer's markets, nursery and garden equipment display and sales, display of cars, RVs, boats, farm equipment and motorcycles, outdoor recreation and entertainment, and food and beverage sales associated with all outdoor events on property described as:

Lots One (1), Two (2), Three (3), Five (5), Six (6), Ten (10) and Reserve A, all in the Town West Square 2nd Addition, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting an amendment to the portion of Parcel 1 located in Lots 1, 3 & 10, Towne West Square 2nd Addition, Parcel 2 (Lot 2, Towne West Square 2nd Addition) and that portion of Parcel 3 is located within Lot 1, Towne West Square 2nd Addition, all in the LC Limited Commercial (LC) zoned DP-71, the Towne West Community Unit Plan (CUP). The DP-71 is located west of West Street, between Kellogg Street/US 54 (south side), Tracy Street (east side), Maple Street (north side) and I-235 (west side).

Per the Unified Zoning Code (UZC; SecIII-B.14.e(4)), outdoor business promotions and/or sales are allowed in the LC district for no more than 48 hours and no more than one two-day period per calendar month provided a license is obtained as required by City Code Section 3.04.010. There are also five other conditions outdoor business promotions and/or sales are subject to: prior written approval of the Wichita Department of Environmental Services for dispensing of food and beverages; no admission fee is to be charged; circuses and carnivals require specific licenses; the outdoor promotion or sales activity may not occupy any part of the required off-street parking for the principal use, and; all electrical connections, temporary structures, etc., shall be in compliance with City Code. The applicant is requesting approval to conduct temporary outdoor retail sales that are in "good taste and consistent with the neighborhood and the property..." for a total of 60 days per year. The proposed activities include: art and craft shows; lawn and garden and landscape exhibits and retail sales; farmers markets; the display of motorized vehicles, including boats, RV's, automobiles, farm equipment and motorcycles, and; the sale of food and beverages. The applicant is also requesting carnivals or circuses limited to 10 days, when not associated with any specific outdoor business promotions and/or sales.

The subject site occupies a little over half of the LC zoned Towne West Mall development. Development in the mall includes, but is not limited to, Dick's Sporting Goods, Dillard's, JC Penny, Sears, a movie theater, a nightclub, fast food restaurants, and other retail businesses. There are no outdoor sales or displays on the Mall site. A SF-5 Single-Family Residential (SF-5) zoned church and school abut the north side of the site as does a LC zoned restaurant. Development north of the site, across Maple Street, include an LC zoned convenience store, small retail strips and small stand alone retail, a parking lot, a self service car wash, and apartments. There is also SF-5 zoned single-family residential development, a GC General Commercial (GC) zoned child care and education facility and a small NR Neighborhood Retail (NR) zoned retail strip. I-235 abuts the west side of the site. East of the site, across Tracy Street is LI Limited Industrial (LI) zoned retail including K-Mart and a large store selling a wide range of baby goods, a large print shop, a large vacant retail box and a Spears restaurant. LI zoned offices, a medical office, retail business and a motel abut the south side of the site as does a LC zoned restaurant. South of this LI zoning is Kellogg Street/US 54 Highway.

The parking for Towne West located in this south and southeast area abuts LI and LC zoned land. This area presents a possible site for the proposed temporary outdoor uses. Other areas that appear to be overflow parking either abut the SF-5 zoned church and school (northeast side of site) or are located in the northwest side of the site south adjacent to SF-5 zoned single-family residences located across

Maple Street. Proximity to these SF-5 zoned developments may make these parking areas less probable sites.

CASE HISTORY: A zone change (Z-0970) from “AA” One Family to “B” Multiple Family was recommended for denial by the MAPC and withdrawn by the applicant on May 10, 1973. A zone change (Z-1598) from “AA” One Family to “E” Light Industrial was approved by the City Council on May 14, 1974, subject to platting the property. The applicant subsequently withdrew the request and requested a zone change (Z-1700) from “AA” One Family to “LC” Limited Commercial, which became effective on April 20, 1978, when the property was platted as Towne West Square Addition. The Towne West Square CUP (DP-71) was originally adopted July 15, 1975, and was amended to reduce floor area, change permitted uses, change parcel boundaries, and modify access controls on May 10, 1977. The subject property was replatted as Lot 9, Towne West Square 2nd Addition on April 17, 1979. On September 12, 2002, CUP2002-34, Amendment No. 2 increased the maximum height of building signs on Lot 9, Towne West Square 2nd Addition to 38.5 feet (Dicks Sporting Goods). An amendment allowing a Tavern and Drinking Establishment and a Night Club in the City in Parcel 1 was approved by the MAPC September 11, 2008.

DAB IV considered this request at their July 1, 2013, meeting and approved it per staff’s recommendation with the following modifications: allowing additional lighting if needed (per law enforcement standards); allowing speakers and amplified sound for circuses and carnivals (they will have as a matter of normal operations); no vehicle sales allowed, and; no summer long concerts series.

The MAPC deferred making a recommendation on the request at their July 11, 2013, meeting, voting to consider the request at their July 25, 2013, meeting.

ADJACENT ZONING AND LAND USE:

NORTH: LC, SF-5 Church and school, restaurant, single-family residential, retail, convenience store, car wash, child care and learning center, apartment

SOUTH: LC, LI Retail, office, restaurant

EAST: LI Retail, printing, restaurant, vacant building

WEST: Unzoned I-235 Highway

PUBLIC SERVICES: All municipal services are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Regional Commercial” development. The Commercial Location Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” The applicant has proposed multiple temporary activities/uses that can be considered in the LC zoning district, but are not permitted by right or/and are not permitted in the CUP overlay DP-71.

The UZC requires multiple Conditional Uses for the proposed temporary outdoor uses in the LC zoned site. The CUP does not permit the proposed temporary outdoor uses. An amendment to the CUP substitutes for the required Conditional Use. Approval will introduce new uses to the area, although a

south portion of the site appears to have had small temporary carnivals or circuses operating for the last couple of years.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Locating the more intense proposed temporary outdoor uses (circuses and carnivals) in the south and southeast portion of the site would appear to not adversely impact the Mall's required/principle parking areas and have the least amount of negative impact to the neighborhood.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request for an amendment to DP-71 be **APPROVED**, with the following conditions:

- (1) All temporary outdoor business promotions and/or sales that include associated carnivals, circuses, rides, outdoor entertainment and recreation and food and beverage sales shall be allowed per the UZC SecIII-B.14.e(4), except all total outdoor business promotions and/or sales that include associated carnivals, circuses, rides, outdoor entertainment and recreation and food and beverage sales shall be allowed for a total of 60 calendar days (unless otherwise noted in conditions 4, 5 & 8) and shall be located in the south and southeast portions (along Kellogg Street/US 54 and Tracy Street) of Parcel 1 that is located in Lot 1, Towne West Square 2nd Addition as shown on an approved site plan.
- (2) Temporary outdoor business promotions and/or sales that include associated food and beverage sales but not carnivals, circuses, rides and outdoor entertainment and recreation may be located in the portion of Parcel 1 located in Lots 1, 3 & 10, Towne West Square 2nd Addition, Parcel 2 (Lot 2, Towne West Square 2nd Addition) and that portion of Parcel 3 as located within Lot 1, Towne West Square 2nd Addition as shown on an approved site plan.
- (3) The temporary outdoor display, but not sales, of motorized vehicles, including boats, RVs, automobiles, farm equipment and motorcycles, including car shows and the associated sale of food and beverages, shall be permitted as shown on an approved site plan in the portion of Parcel 1 located in Lots 1, 3 & 10, Towne West Square 2nd Addition, Parcel 2 (Lot 2, Towne West Square 2nd Addition) and that portion of Parcel 3 as located within Lot 1, Towne West Square 2nd Addition.
- (4) Temporary carnivals, circuses, rides, outdoor entertainment and recreation not associated with temporary outdoor business promotions and/or sales shall be allowed a total of 10 days per calendar year and be located in the south and southeast portions (along Kellogg Street/US 54 and Tracy Street) of Parcel 1 that is located in Lots 1, Towne West Square 2nd Addition as shown on an approved site plan with hours of operation.
- (5) A seasonal nursery shall be allowed per the UZC Sec.III-D.6.z., as shown on an approved site plan, located in the portion of Parcel 1 located in Lots 1, 3 & 10, Towne West Square 2nd Addition, Parcel 2 (Lot 2, Towne West Square 2nd Addition) and that portion of Parcel 3 as located within Lot 1, Towne West Square 2nd Addition. The seasonal nursery would operate from April through June, seven days a week, 8AM – 7PM/dusk, Monday – Saturday, and 9AM – 7PM/dusk, Sunday.
- (6) No temporary or equipment buildings shall be located within any setbacks or easements.
- (7) No outdoor lighting shall be added, unless required by law enforcement.

- (8) A Farmer's Market shall be allowed per the UZC Sec.III-D.6jj., as shown on an approved site plan, located in the portion of Parcel 1 located in Lots 1, 3 & 10, Towne West Square 2nd Addition, Parcel 2 (Lot 2, Towne West Square 2nd Addition) and that portion of Parcel 3 is located within Lot 1, Towne West Square 2nd Addition.
- (9) Restroom facilities for employees must be provided and may be provided by agreement with a permanent use in the center upon approval of the Superintendent of Central Inspection. No portable bathroom facilities are allowed, unless approved by MABCD.
- (10) All approved temporary outdoor business promotions and/or sales shall be on paved surfaces.
- (11) No outdoor speakers or amplifiers shall be allowed. The exception is the outdoor speakers or amplifiers used by carnivals, circuses and rides, as permitted by the City's noise ordinance.
- (12) No summer long concerts series.
- (13) Signage shall be per DP-71, except for the temporary signs.
- (14) The applicant shall provide a parking analysis to ensure parking remains in compliance with the parking standards of the UZC. The listed approved uses are permitted only in overflow parking areas.
- (15) Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
- (16) The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
- (17) The applicant shall secure all required permits and inspections, including, but not limited to, a Community Event Permit and temporary building permits from MABCD for each of the approved temporary outdoor business promotions and/or sales.
- (18) The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.
- (19) If the Zoning Administrator finds that there is a violation of any of the conditions of the amendment to the CUP, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the amendment to the CUP is null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The subject site occupies a little over half of the LC zoned Towne West Mall development. Development in the mall includes, but is not limited to, Dick's Sporting Goods, Dillards, JC Penny, and Sears, a movie theater, a nightclub, fast food restaurants, and other retail businesses. There are no outdoor sales or displays on the Mall site. A SF-5 Single-Family Residential (SF-5) zoned church and school abut the north side of the site as does a LC zone restaurant. Development north of the site, across Maple Street, include an LC zoned convenience store, small retail strips and small stand alone retail, a parking lot, a self service car wash, and apartments. There is also SF-5 zoned single-family residential development, a GC General Commercial (GC) zoned child care and education facility and a small NR Neighborhood Retail (NR) zoned retail strip. I-235 abuts the west side of the site. East of the site, across Tracy Street is LI zoned retail including K-Mart and a large store selling a wide range of baby goods, a large print shop, a large vacant retail box and a restaurant. LI Limited Industrial (LI) zoned offices, a medical office, retail business and a

motel abut the south side of the site as does a LC zoned restaurant. South of this LI zoning is Kellogg Street/US 54 Highway.

- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC, with a CUP over lay, DP-71 which permits: a regional shopping center, hotel and motel, nightclub and a tavern or drinking establishment, drive in bank, office, medical, laboratories, restaurant, theater, service station, and automobile service and parts sales, including tire and battery sales (not including new or used car sale or body and fender shops). The regional shopping center, Towne West Mall, is the anchor of all the permitted uses and the required parking reflects the (+) 80-acres of retail development.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed listed outdoor retail sales and uses are temporary or seasonal in their duration. The proposed listed outdoor retail sales and uses are intended to draw more traffic to the mall. The conditions of the amendment to the CUP are intended to minimize the negative impact on surrounding businesses, which may benefit from the additional vehicular traffic.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Regional Commercial” development. The Commercial Location Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” The applicant has proposed multiple temporary activities/uses that can be considered in the LC zoning district, but are not permitted by right or/and are not permitted in the CUP overlay DP-71.

The UZC requires multiple Conditional Uses for the proposed temporary outdoor uses in the LC zoned site. The CUP does not permit the proposed temporary outdoor uses. An amendment to the CUP substitutes for the required Conditional Use. Approval will introduce new uses to the area, although a south portion of the site appears to have had small temporary carnivals or circuses operating on for the last couple of years.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Locating the temporary carnivals, circuses, rides, outdoor entertainment and recreation in the south and southeast portion of the site would appear to not adversely impact the Mall’s required/principle parking areas and have the least amount of negative impact to the neighborhood.

- (5) **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for Code compliance and an increase in traffic.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

B. JOHNSON moved, **FOSTER** seconded the motion, and it carried (13-0).

7. **Case No.: ZON2013-00016** – Janelen Stark requests a city zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on property described as:

The North 60 feet of lots 1, 3, 5, 7, 9 and 11, 14th Street, Orchard Beach Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is seeking TF-3 Two-family Residential (TF-3) zoning for a 0.6 acre (9,000 square feet) site located at the southeast corner of West 14th Street North and North Garland Avenue. The SF-5 Single-family Residential (SF-5) zoned site is developed with a residential duplex (1430 North Garland Avenue and 1221 West 14th Street). City building permit records indicate a permit was issued for 1430-32 North Garland on January 7, 1939. *Polk's Wichita City Directory 1941* reports the current addresses of 1430 North Garland and 1221 West 14th Street. A zoning map for 1937 depicts the site as being zoned the A Residence District (A). The A District permitted both single-family residences and two-family residences by-right. In 1950 the City's Zoning Code still allowed both duplex and single-family residences in the A district as a use by-right. At some later point in time, probably during the 1950s or early 60s, the property was part of a mass rezoning that rezoned multiple properties to the AA One-family District (AA), which was the forerunner of today's SF-5 district, and does not permit duplex residences. As currently zoned, the duplex is a legal nonconforming use. The application indicates the applicant is seeking the zone change to satisfy a mortgage company's requirement that the zoning match the property's use.

Properties abutting the application area are zoned SF-5, and are developed with single-family residences. There are a significant number of TF-3 zoned lots located approximately 110 feet south of the subject site. Most of the TF-3 zoned lots located south of the application area have frontage on 13th Street; however, a few lots that front the west side of North Garland Avenue just north of 13th Street are also zoned TF-3. There are also a significant number of lots zoned TF-3 located 325 feet to the east of the application area.

CASE HISTORY: The 1937 zoning map indicates the property was zoned the A Residence District that permitted both single-family residential and two-family residential as a use by-right. In the early 1950s the City of Wichita's zoning code was modified to establish a single-family residential district, the AA District that did not allow two-family residential uses. The application area is platted as the north 60 feet of Lots 1, 3, 5, 7, 9 and 11, 14th Street, Orchard Beach Addition.

ADJACENT ZONING AND LAND USE:

North: SF-5; single-family residential
South: SF-5; single-family residential
East: SF-5; single-family residential
West: SF-5; single-family residential

PUBLIC SERVICES: The property is served by all normally supplied utilities and public services. West 14th Street North has 50 feet of right-of-way; North Garland Avenue has 60 feet of right-of-way.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts the site being appropriate for “urban residential” uses. The “urban residential” category reflects the full range of housing types found in a large urban municipality. The range of housing types 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.

RECOMMENDATION: Based upon the information available to staff at the time the staff report was prepared, staff recommends approval of the request for TF-3 zoning.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Properties abutting the application area are zoned SF-5, and are developed with single-family residences. There are a significant number of TF-3 zoned lots located approximately 110 feet south of the subject site. Most of the TF-3 zoned lots located south of the application area have frontage on 13th Street; however, a few lots that front the west side of North Garland Avenue just north of 13th Street are also zoned TF-3. There are also a significant number of lots zoned TF-3 located 325 feet to the east of the application area. The larger neighborhood appears to be an older well maintained collection of properties. Reinvestment and upkeep of nearby residences does not appear to have been hampered by the presence of the subject duplex.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned SF-5 Single-family Residential and that zoning district does not permit the duplex residential structure that was legally developed on the site in 1939. The property could continue to be used as a legal nonconforming duplex use; however, ownership of the property is potentially made more difficult by the existing zoning so long as financial institutions are reluctant to provide financing for nonconforming properties. The property’s current SF-5 zoning is not appropriate for the structure that was, in 1939, developed on the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of TF-3 zoning for the subject site should not detrimentally impact nearby properties as there are other lots in the extended area that are zoned TF-3. Staff is aware that there are not any TF-3 zoned lots abutting the site, and it could be argued that approval amounts to spot zoning; however, the property has presumably been used as a duplex since 1939, and seems to have not detrimentally impacted nearby properties. The North Riverside neighborhood has numerous instances of TF-3 zoning located next to SF-5 zoning. Staff is not aware of instances where that zoning pattern has caused excessive difficulties. (Spot zoning is defined as: the capricious and unreasonable treatment of a limited area within a particular district; represents a departure from the comprehensive plan; singles out a parcel of land for special treatment or privileges not in harmony with the other classifications in the area and without any apparent circumstances which call for different treatment.)
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Presumably it would be an economic hardship to the

owner of the property if the owner were to be forced to convert the structure to a single-family residence in order to gain financing.

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 being appropriate for “urban residential” uses. The “urban residential” category reflects the full range of housing types found in a large urban municipality. The range of housing types 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.
6. Impact of the proposed development on community facilities: The property has been developed for decades. Public services are present for the proposed use.

DALE MILLER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

B. JOHNSON moved, **FOSTER** seconded the motion, and it carried (13-0).

MCKAY recused himself from the item stating that he owned property in the area.

8. **Case No.: CON2013-00015** – Gary and Debra Lofland (applicants) request a City Conditional Use for a Nightclub in the City in LC Limited Commercial zoning within 300 feet of residential zoning on property described as:

The North 130.54 feet of the West 140 feet of Block H, McAdam Acres Addition to Wichita, Sedgwick County Kansas.

AND

Beginning 140 feet East of the Northwest corner of Block H; thence East 107.44 feet; thence South 95 feet; thence West 52.45 feet; thence South 35.49 feet; thence West 55 feet; thence North 130.58 feet to the beginning, McAdam Acres Addition to Wichita, Sedgwick County, Kansas.

AND

Beginning 105 feet West of the Northeast corner of Block H; thence West 15 feet; thence South 95 feet; thence East 15 feet; thence North 95 feet to the beginning, McAdam Acres Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The LC limited Commercial (LC) zoned site is one of four small LC zoned site/businesses located on the northeast corner of Oliver and Pawnee Avenues. Recent license records track the site’s stand alone building operating as a full service restaurant (DER) from 2005 to the present. Per the Unified Zoning Code (UZC), Sec.II-B.13.b.; a DER, is a restaurant that derives in a six-

month period less than fifty percent (50%) of its gross revenues from the preparation and retail sale of alcoholic liquor or cereal malt beverage for consumption on the premises.

The applicants' propose to continue to serve food, but with no limit to the sale of alcoholic liquor or cereal malt beverage for consumption on the premises. They also propose to provide live entertainment, including karaoke, live bands, fund raisers, etc. The UZC defines all of the above combined activities as a Nightclub in the City; Sec.II-B.9.b.; "...an establishment located in the City that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor (drinks) are offered, consumed or served to the public or its members, and which may or may not serve food." When a nightclub is located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District, approval of a Conditional Use is required; UZC, Sec.III-D6.w. The nearest residential zoning district to the site is a TF-3 zoned duplex, located approximately 60 feet north of the site, across Blake. The nearest single-family residences are located approximately 170 feet east (zoned TF-3) of the site and approximately 180 feet northeast (zoned SF-5 Single-Family Residential {SF-5}) of the site, across Blake Street. A church is located approximately 100 feet west of the site across Oliver Avenue.

The applicants have provided an aerial of the 18,276-square foot platted site. The aerial shows paved parking on the Oliver Avenue/west side of the site. It also shows unpaved parking on the east side of the site. Per the UZC, Sec.IV.A2.b; non-residential parking lots in the City are required to be paved with asphalt, concrete or similar materials, not including gravel or rock. Access to the site includes one drive onto Oliver, an arterial street, and two drives onto Blake Street, a local two-lane residential street. The Appraiser's link has the building listed as 2,400-square feet. A nightclub requires more parking than a restaurant; one space per two occupants, as opposed to one space per three occupants. Applying 15-square feet of space needed per occupant, or 30-square feet per two occupants for one parking space, the site would need to provide 80 parking spaces; this total could vary more or less depending on the Fire Marshall's approved occupancy. The applicant needs to provide the seating capacity of the building to address the new parking standards if the Conditional Use is approved.

As noted the site is one of four small LC zoned site/businesses located on the northeast corner of Oliver and Pawnee Avenues. The other businesses are a south abutting liquor store, an east abutting auto repair garage and a southeast abutting small retail strip, that has (but not limited to) a Subway fast food restaurant and a Cowley County Junior College extension office. MF-29 Multi-family Residential (MF-29) zoned vacant land is also located southeast of the site, along the north side of Pawnee. A mostly SF-5 Single-Family Residential (SF-5) zoned single-family residential neighborhood is located east of the auto repair garage; there is also some TF-3 Two-Family Residential zoning mixed into the area. North of the site, across Blake Street, is a LC zoned furniture store, TF-3 zoned duplexes, and the just noted SF-5 zoned single-family residential neighborhood. A LC zoned apartment complex is located north of the furniture store. West of the site across Oliver is a LC zoned pawn shop and church and SF-5 zoned single-family residences.

There is more LC and GC General Commercial (GC) zoned nonresidential development located south of Pawnee than in the area located north of Pawnee, where the subject site is located. The area south of Pawnee is dominated by the LI Limited Industrial (LI) zoned aircraft plants and the AFB Air Force Base (AFB) zoned McConnell Air Force base. The closest of these aircraft supporting properties to the site (Spirit being the largest) is the LI zoned Cessna facilities located approximately ½-mile southeast of the site, across Pawnee Avenue. The north-south running Oliver Avenue bisects this aircraft complex land

into east and west halves. The LC and GC zoned development located south of Pawnee includes (but is not limited to): car lots; vacant land; pawn shops; retail; small office warehouses; a bowling alley; a DER; a restaurant; an electric substation; a US Post Office sorting facility; some apartments, and; maybe two bars located approximately 900-1,800 feet south of the site. Unlike the immediate neighborhood around the site, there is no single-family residential development located around these bars.

CASE HISTORY: The site is located on a portion of Reserve H, McAdam Acres Addition, which was recorded with the Register of Deeds July 5, 1951. The applicants were advised to apply for a Conditional Use, when they were denied their Entertainment Establishment license by the City. Staff has received a letter protesting the request.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, TF-3, SF-5	Furniture store, apartments, duplexes, single-family residences
SOUTH:	LC, MF-29, GC	Liquor store, retail strips, vacant lands, DER, car lot, pawn shops, electric substation, bowling alley, bars, fast food, self storage,
EAST:	LC, TF-3, SF-5	Auto repair, single-family residences
WEST:	LC, SF-5	Pawn shop, churches, single-family residences

PUBLIC SERVICES: The site has a drive onto Oliver Avenue. Oliver is a major arterial street at this location, with four lanes and turn lanes. The site also has two drives onto Blake Street, a paved two lane residential street. All utilities are available to the site.

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

The UZC requires a Conditional Use for a nightclub or a drinking establishment/tavern when they are located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District. The nearest residential zoning district to the site is a TF-3 zoned duplex, located approximately 60 feet north of the site, across Blake. The nearest single-family residences are located approximately 170 feet east (zoned TF-3) of the site and approximately 180 feet northeast (zoned SF-5 Single-Family Residential {SF-5}) of the site, across Blake Street. A church is located approximately 100 feet west of the site across Oliver Avenue.

The site is not currently permitted for a nightclub. Planning could find no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub or a drinking establishment/tavern on the site. Approval of a Conditional Use for a nightclub at this site would introduce a new use to the area north of Pawnee Avenue along Oliver Avenue. Recent license records track the site’s stand alone building operating as a full service restaurant (DER) from 2005 to the present.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site does have one drive onto Oliver Avenue, an arterial street. It also has two drives onto Blake Street, a local residential street. Access onto Blake allows opportunities for nightclub traffic to spill over into the adjacent single-family residential neighborhood. The east abutting LC auto repair garage provides approximately 170 feet of buffer space between the site and a single-family residential neighborhood. The 60 feet of Blake Street right-of-way offers no buffer for the TF-3 zoned duplex(s) and the SF-5 zoned single-family residential neighborhood, as the site has two drives onto Blake and the east most portion of its parking is facing the TF-3 zoned duplex(s).

The site is located within western edge of the McConnell AFB Joint Land Use Study Area Boundary; JLUS. The JLUS is intended to promote and protect the future operational mission capacity of McConnell AFB, including evaluation of the compatibility of existing and future land use within the JLUS Area Boundary. The current request will not compromise the mission of McConnell AFB. The site is located within Airport Hazard Zone Area C, which establishes height restrictions. The current request will not be impacted by the Airport Hazard Zone Area C.

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

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The site is one of four small LC zoned site/businesses located on the northeast corner of Oliver and Pawnee Avenues. The other businesses are a south abutting liquor store, an east abutting auto repair garage and a southeast abutting small retail strip, that has (but not limited to) a Subway fast food restaurant and a Cowley County Junior College extension office. MF-29 Multi-family Residential (MF-29) zoned vacant land is also located southeast of the site, along the north side of Pawnee. A mostly SF-5 Single-Family Residential (SF-5) zoned single-family residential neighborhood is located east of the auto repair garage; there is also some TF-3 Two-Family Residential zoning mixed in the area. North of the site, across Blake Street, is a LC zoned furniture store, TF-3 zoned duplexes, and the just noted SF-5 zoned single-family residential neighborhood. A LC zoned apartment complex is located north of the furniture store. West of the site across Oliver is a LC zoned pawn shop and church and SF-5 zoned single-family residences.

There is more LC and GC General Commercial (GC) zoned nonresidential development located south of Pawnee than in the area located north of Pawnee, where the subject site is located. The area south of Pawnee is dominated by the LI Limited Industrial (LI) zoned aircraft plants and the AFB Air Force Base (AFB) zoned McConnell Air Force base. The closest of these aircraft supporting properties to the site (Spirit being the largest) is the LI zoned Cessna facilities located approximately ½-mile southeast of the site, across Pawnee Avenue. The north-south running Oliver Avenue bisects this aircraft complex land into east and west halves. The LC and GC zoned development located south of Pawnee includes (but is not limited to): car lots; vacant land; pawn shops; retail; small office warehouses; a bowling alley; a DER; a restaurant; an electric substation; a US Post Office sorting facility; some apartments, and; maybe two bars

located approximately 900-1,800 feet south of the site. Unlike the immediate neighborhood around the site, there is no single-family residential development located around these bars.

- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC, which accommodates office and retail uses, including its current use as a DER. Approval of a Conditional Use would permit the site to become a nightclub, which would introduce a new use into the neighborhood. The site could continue to be used as permitted by right in the LC zoning district.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Typical concerns about nightclubs include bad behavior resulting from unlimited liquor sales, the noise from music and dancing, and the hours of the nightclub having a detrimental impact on the adjacent SF-5 and TF-3 zoned single-family residential neighborhood. These are new negative considerations for the single-family residential neighborhood and the neighborhood as a whole. Denial of the request could have a negative financial impact on the applicants.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2030 Wichita Functional Land Use Guide” depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

The UZC requires a Conditional Use for a nightclub or a drinking establishment/tavern when they are located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District. The nearest residential zoning district to the site is a TF-3 zoned duplex, located approximately 60 feet north of the site, across Blake. The nearest single-family residences are located approximately 170 feet east (zoned TF-3) of the site and approximately 180 feet northeast (zoned SF-5 Single-Family Residential {SF-5}) of the site, across Blake Street. A church is located approximately 100 feet west of the site across Oliver Avenue.

The site is not currently permitted for a nightclub. There is no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub or a drinking establishment/tavern on the site. Approval of a Conditional Use for a nightclub at this site would introduce a new use to the area north of Pawnee Avenue along Oliver Avenue. Recent license records track the site’s stand alone building operating as a full service restaurant (DER) from 2005 to the present.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site does have one drive onto Oliver Avenue, an arterial street. It also has two drives onto Blake Street, a local residential street. Access onto Blake allows opportunities for nightclub traffic to spill over into the adjacent single-family residential neighborhood. The east abutting LC auto repair garage provides approximately 170 feet of buffer space between the site and a single-family residential neighborhood. The 60 feet of Blake Street right-of-way offers no buffer for

the TF-3 zoned duplex(s) and the SF-5 zoned single-family residential neighborhood, as the site has two drives onto Blake and the east most portion of its parking is facing the TF-3 zoned duplex(s).

The site is located within western edge of the McConnell AFB Joint Land Use Study Area Boundary; JLUS. The JLUS is intended to promote and protect the future operational mission capacity of McConnell AFB, including evaluation of the compatibility of existing and future land use within the JLUS Area Boundary. The current request will not compromise the mission of McConnell AFB. The site is also located within Airport Hazard Zone Area C, which establishes height restrictions. The current request will not be impacted by the Airport Hazard Zone Area C.

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

However, if the MAPC considers the request for a nightclub appropriate, Planning recommends the following conditions:

- (1) No outside loudspeakers or entertainment are permitted.
- (2) The applicant needs to provide the seating capacity of the building to address the parking standards for a nightclub if the Conditional Use is approved. Parking must be per code. Relief can be sought through Administrative Adjustment. If a variance is required, approval of the Conditional Use is contingent on approval of the variance.
- (3) Paving of the east portion of the site must be completed within 6 months of approval of the Conditional Use by the appropriate governing body. All permits and inspections, including a drainage plan for the required paved parking, must be submitted and approved.
- (4) Landscaping and screening will be per the Unified Zoning Code and the Landscape Ordinance.
- (5) No pole lights taller than 14 feet, including the base. All outside lights will be designed to disperse light onto the subject site and away for residential development.
- (6) The site will be developed with an approved revised site plan, showing, but not limited to, screening, landscaping and parking. The site plan must be submitted for review within 60-days of approval by the appropriate governing body.
- (7) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

BILL LONGNECKER, Planning Staff presented the Staff Report. He mentioned that DAB III will hear the application on August 7, 2013.

GARY LOFLAND, 2304 S. OLIVER, APPLICANT said he and his wife are both retired from Boeing and this is their retirement project. He said the reason they bought the place was he used to go

there for lunch from Boeing. He said this establishment has always been a bar and grill and has never been what is now described as a DER which is a restaurant that derives in a six-month period less than fifty percent of its gross revenues from the preparation and retail sale of alcoholic liquor or cereal malt beverages. He said this has never been a full service kitchen, they have limited capabilities, but he also feels they have some of the best food in town. He said they are very attuned to the single-family housing around the site because they have a very tight knit employee situation because they are business partners and friends with most of the surrounding businesses whose owners/employees usually come in for lunch every day. He concluded by reiterating that they are not capable of being a full service restaurant. He said they are not trying to change how they operate but just bring their license up to City code. He said they would like the entertainment license for Karaoke which they have a couple of nights a week. He asked the Commission to approve the application.

DENNIS asked if the applicant was in agreement with the seven conditions listed in the Staff Report.

LOFLAND said yes, they agree with the conditions.

MCKAY (Out (@2:15 p.m.)

FOSTER asked who the market was for the club.

LOFLAND said they do limited advertising mostly on Facebook and other social media. He said their clientele is already established and they are not looking to increase the clientele due to their size. He mentioned the afternoon crowd, evening crowd and sports fans because they have 15 TV's.

G. SHERMAN commented that the applicant is not filing the application to change anything, but just make the site legal.

LOFLAND explained that the liquor licensing rules have evolved over the last 20 years in Wichita. He said he is not going to change the way he is doing business. He said when he went to renew his license, he was told that the establishment does not fit the current Code and to go see the Planning Commission. He said they are not going to make this into a honky-tonk, this is a family atmosphere bar and grill that allows children until 9:00 p.m.

JOLENE NOVASCONE, 8814 CHURCHILLCIRCLE said her husband owns a duplex at 2280 and 2281 South Glendale on the northeast corner of Blake and Glendale. She said she is the mower and trash picker upper for that property. She said there is lots of trash, not necessarily from this site but how can she tell because it is beer bottles, beer cans, diapers, etc. and she also mentioned the traffic. She said she was concerned about the music but she doesn't think that will be a problem. She was also concerned about the parking but now it appears they are going to add parking so that will probably be okay. She said this hearing has answered her questions.

LOFLAND said he is out there with her picking up trash every morning. He said foot traffic in the neighborhood travels from the corner through his lot back towards the neighborhood. He said because of this pattern, trash is a definite problem.

MOTION: To approve subject to staff recommendation.

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

LONGNECKER clarified that the motion included the seven conditions listed in the Staff Report plus the requirement for an offsite parking agreement prior to installation of the paved parking.

FOSTER clarified since the zoning goes with the land, can anything be added to the conditions to keep this from becoming a detriment to the neighborhood after this owner no longer owns the property.

LONGNECKER commented that a bar always has the possibility of being a detriment to the neighborhood because of the alcohol. He said this is a relatively small building which he believes works in its favor. He said the Commission could limit the size of the building; however, staff has received some criticism in the past regarding telling proprietors how to run their businesses.

FOSTER asked about screening of the trash container.

LONGNECKER said the UZC requires screening around the trash container. He said they can make that a specific condition.

LOFLAND indicated they did not have a problem screening the trash container.

The **MOTION** as **amended**, to include a written offsite parking agreement and screening around the trash container carried (12-0).

Other Matters/Adjournment

The Metropolitan Area Planning Commission adjourned at 3:10 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