

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

September 26, 2013

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 26, 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: Don Klausmeyer Chair; Matt Goolsby Vice Chair; Steve Anthimides; David Dennis; David Foster; Bill Johnson; John W. McKay Jr.; M.S. Mitchell; George Sherman; Debra Miller Stevens and Chuck Warren. Joe Johnson; 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; Jeff Vanzandt, Assistant City Attorney and Maryann Crockett, Recording Secretary.

1. Approval of the August 8, Planning Commission minutes.

JEFF VANZANDT, ASSISTANT CITY ATTORNEY explained that some Commissioners left the August 8, 2013 meeting at 2:30 p.m. and the meeting continued on until 4:00 p.m. He explained that it was the Commissioner's discretion to vote on approval of the minutes from the meeting.

MOTION: To approve the August 8, 2013, 2013 meeting minutes, as amended.

MCKAY moved, **DENNIS** seconded the motion, and it carried (7-0-4).

ANTHIMEDES, B. JOHNSON, MITCHELL and **MILLER STEVENS** – Abstained.

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2013-00032: One-Step Final Plat - BETHANY BAPTIST 1ST ADDITION.**

CHAIR KLAUSMEYER announced that the item was deferred for two weeks.

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- 2-2. **SUB2013-00034: One-Step Final Plat - THE WATERFRONT SEVENTH ADDITION.**

Note: This is a replat of a portion of Waterfront 6th Addition in addition to unplatted property. The site has been approved for a zone change (ZON2012-00015) from LI Limited Industrial to GO General Office.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that sewer services are available. A guarantee is needed for a water distribution line in Castlewood.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the applicant's drainage plan.

- D. Traffic/City Engineering has approved the 58-foot width of Castlewood Ct if restricted to No Parking on both sides of the street and constructed to commercial street thickness standards. A restrictive covenant shall be provided specifying the No Parking requirement.
- E. The Applicant shall guarantee the paving of the proposed street.
- F. The plat needs to include the correct spelling of “railroad” on the face of the plat, and “open space” in the plattor’s text.
- G. As the plat consists of commercial lots abutting a non-arterial street, the Subdivision Regulations require a sidewalk along the street frontage, which shall be included within the paving petition.
- H. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineer (USACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- I. 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 restrictive 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.
- J. 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.
- K. 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.
- L. GIS has requested Castlewood Ct be named Castlewood Cir or Waterfront Ct.
- M. 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.
- N. On the final plat tracing, the MAPC signature block needs to reference “Don Klausmeyer” as Chair.
- O. The plattor’s text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.

- P. 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.)
- Q. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- R. 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.
- S. 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.
- T. 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.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- W. 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.

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

2-3. **SUB2013-00039: One-Step Final Plat – QUIKTRIP ADDITION.**

NOTE: This is a replat of a portion of the Overlook Addition and Ruffin 4th Addition and includes the vacation of an alley. The applicant proposes a zone change (ZON2013-00019) from TF-3 Two-family Residential to LC Limited Commercial.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available. A guarantee is needed to relocate sanitary sewer (lateral) as per plans. Removal is requested of abandoned lateral sanitary sewer lines.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the applicant's drainage plan.
- D. Traffic Engineering has approved the access controls. The plat proposes two access openings along Central and two openings along Oliver.
- E. The applicant shall guarantee the closure of any driveway openings or alley returns located in areas of complete access control or that exceed the number of allowed openings. A Driveway/Alley Closure Certificate in lieu of a guarantee may be provided.
- F. City Engineering requests a petition for future paving of the alley dedication.
- G. County Surveying advises that the legal description needs corrected to add Lots 49 and 641, Overlook Addition.
- H. County Surveying advises the legal description needs corrected to include that portion of the 12-foot alley adjoining Lot 644, Overlook Addition.
- I. County Surveying advises a distance is needed along the southeast lot line.
- J. The plat's text addressing the contingent alley dedication should be deleted and replaced with the following: "The public access easement is granted for vehicular traffic and emergency access. The contingent alley dedication shall become effective in the event no paved access extends from the public access easement to the remainder of Lot 1, Block 1, QuikTrip 15th Addition."
- K. As the plat consists of a commercial lot abutting a non-arterial street, the Subdivision Regulations require a sidewalk along DellRose.
- L. The plat's text shall delete reference to "a reserve".
- M. On the final plat tracing, the MAPC signature block needs to reference "Don Klausmeyer" as Chair.
- N. The Applicant's site plan has denoted a 10-foot building setback along Central which represents an adjustment of the Zoning Code standard of 20 feet for the LC Limited Commercial District. The applicant has informed staff the site plan will be revised to reflect a 20-foot setback along Central.
- O. Spelling corrections need to be made for: "concrete base", and "north half of the platted 12 foot alley",

- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- S. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- X. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

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

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

PUBLIC HEARING – VACATION ITEMS

There were no Vacation items.

PUBLIC HEARINGS

3. **Case No.: ZON2013-00021**- Markland, LLC; Ulysess Gooch (owners/applicants) / Robert W. Kaplan (agent) request a City zone change from SF-5 Single family Residential to LC Limited Commercial on 2.93 acres on property described as:

Lot 11, Block 2, in Crestview Lakes Addition to Wichita, Sedgwick County, Kansas AND .065% interest in and to the drives, lake and park areas lying in Crestview Lakes Addition.

AND

Lot 12, Block 2, in Crestview Lakes Addition to Wichita, Sedgwick County, Kansas AND .065% interest in and to the drives, lake and park areas lying in Crestview Lakes Addition.

BACKGROUND: The applicants are seeking LC Limited Commercial (LC) zoning for two platted lots (Lots 11 and 12, Block 2, Crestview Lakes and addressed as 11 and 12 North Crestview Lakes Drive) located northwest of the intersection of East 21st Street North and North Oliver Avenue. The subject lots are currently zoned SF-5 Single-family Residential (SF-5), are developed with single-family residences (built in 1946 and 1953) and contain a total of 2.93 acres. Combined the two properties have approximately 445 feet of frontage along North Oliver Avenue, and 290 feet of frontage along East 21st Street North. The application area has street access to North Oliver Avenue and to East 21st Street, not to the interior local serving streets – Crestview Lakes Drive, North Belmont Avenue or North Fountain Avenue – that serve the majority of the area’s residential lots.

Located immediately north and west of the subject property are SF-5 zoned single-family residences located on approximately two-acre lots. In fact, the much larger area located farther north and west of the application area is developed with single-family residences located on lots ranging in size from two-plus acres to approximately 11,000 square feet. The homes in the larger residential neighborhood located north and west of the application area appear to be well-maintained. The Crestview Lakes Addition has a park-like setting with water features and open space, which probably has contributed to the homes having maintained market value.

Located east across North Oliver Avenue is a mostly zoned LC University Plaza commercial-retail sales center, subject to the development standards contained in Community Unit Plan (CUP) DP-8. Part of the CUP is zoned SF-5 with a variance to permit non-residential that supports the retail center. Southeast of the application area, south of East 21st Street North and east of North Oliver Avenue are two SF-5 zoned churches. East of the Unity Church that is located at the southeastern corner of the intersection of East 21st Street North and North Oliver Avenue is property that is zoned LC. South of the subject property, at the southwest corner of the intersection of East 21st Street and North Oliver Avenue, is Wichita State University’s 123-acre golf course that is zoned SF-5 subject to the U University District (U) overlay. The U overlay district limits development to uses typically associated

with institutions of higher learning, such as: classrooms, dorms, athletic facilities, laboratories, libraries, museums, parking and other facilities typically associated with institutions of higher learning.

The purpose of the LC zoning district is to accommodate retail, commercial, office and other complementary land uses. The LC district permits 66 uses by-right; selected uses permitted by-right in the LC district include: single-family, multi-family, assisted living, group residence, community assembly, hospital, nursing facility, bank, convenience store, hotel/motel, medical service, office, restaurant, personal care service, personal improvement service, general retail sales, limited vehicle repair and agricultural sales and service. Building setbacks are established by the standards required by the LC district or by separate compatibility standards that override the zoning district standards, and are as follows: front (East 21st Street North) 20 feet; street side (North Oliver Avenue) 10 feet; rear (north property line) 25 feet (compatibility setback) and interior side (west property line) 25 feet (compatibility setback). Building height is limited to 43 feet (compatibility height) even though the LC district permits building height of up to 80 feet or higher with additional building setback. Dumpsters and refuse receptacles are required to be located a minimum of 20 feet from the north and west property lines. Light poles are limited to a maximum of 15 feet in height, including the base, if located within 200 feet of SF-5 zoning unless a lighting study has been prepared that demonstrates light will be contained on-site, and cutoff fixtures are required to minimize light trespass. The LC district permits larger, taller and a greater number of sign types than signage permitted in SF-5 district, including: building signs up to 400 square feet, ground or pole signs up to 300 square feet in area and 25 to 35 feet tall, portable and possibly off-site billboard signs. Single-family residences generate approximately 10 average daily vehicle trips whereas retail uses in a shopping center can generate approximately 42 average daily trips per 1,000 square feet of floor area. If the site were developed at 30 percent coverage, 38,289 square feet of floor area could be developed on the site. At 42 average daily trips, 38,289 square feet of floor area could generate 1,608 average daily trips. Convenience stores during the p.m. peak period can generate an average of 97 daily vehicle trips per 1,000 square feet of gross floor area. A drug store during the weekday can generate 88 average daily vehicle trips per 1,000 square feet of gross floor area. Zoning screening is required along the common property line where property that is zoned for nonresidential uses abuts SF-5 zoned property (north and west property lines). Zoning screening can be provided by a six-foot tall fence, landscaping thick enough to provide a solid screen year-round, earth berms or some combination of the three. The Landscape Ordinance will require one tree to be planted every 40 feet where zoning screening is required. New parking lots are also required to be landscaped when located within view of streets

CASE HISTORY: Crestview Lakes Addition was recorded in 1940.

ADJACENT ZONING AND LAND USE:

North: SF-5; large-lot single-family residential
South: SF-5; WSU golf course
East: LC, SF-5; commercial-retail sales center; church
West: SF-5; large-lot single-family residential

PUBLIC SERVICES: The intersection of East 21st Street and North Oliver Avenue carries an average daily traffic volume of 16,656 to 25,853 vehicles. East 21st Street North and North Oliver Avenue are paved four-lane arterial streets with left-turn lanes at the intersection. Where East 21st Street North and North Oliver Avenue abut the application area there is only 40 feet of half-street right-of-way, which

does not meet current minimum right-of-way standards. The current right-of-way width for arterial street intersections is 75 feet and 60 feet otherwise. The intersection of East 21st Street at North Oliver is signalized in all four directions. All publicly supplied utilities are available or can be extended to serve the site.

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. Applicable commercial location guidelines contained in the “1999 Comprehensive Plan Update” state, in general: 1) commercial sites should be located near arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic; 2) commercial development should have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses and 3) locate commercial uses in compact clusters or nodes versus extended strip developments. The Comprehensive Plan also contains a goal statement, Goal XI that the City should develop, conserve and revitalize housing and neighborhoods that will provide safe, decent, marketable and affordable conditions for all residents. The Comprehensive Plan also contains an objective to “minimize the detrimental impact of higher intensity land uses and transportation facilities located near residential living environments.”

RECOMMENDATION: From a zoning standpoint, the intersection of North Oliver Avenue and East 21st Street North is somewhat unusual in that only one of the corners is zoned LC; the other three corners are zoned SF-5. Many, if not most, properties located at arterial street intersections throughout the city have been rezoned to LC or some other non-SF-5 district. However, the fact that the intersection of East 21st Street and North Oliver Avenue has three SF-5 zoned corners with single-family residences, a neighborhood scale church and the university golf course gives the intersection a feel more like a neighborhood than a commercial area. Based upon the information available at the time the staff report was prepared, it is recommended that the request be denied.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Properties located north, west, south and southeast are zoned SF-5, and are developed with low-intensity uses such as single-family residences, university golf course and churches. Properties located east of the site are zoned SF-5 and LC, and are developed with retail uses. Land located west of North Oliver Avenue has a low intensity and/or park-like feel because of the large-lot single-family residences and associated neighborhood open space. The golf course also adds to the low-intensity feel of the land located west of North Oliver Avenue.
2. The suitability of the subject property for the uses to which it has been restricted: The subject properties are zoned SF-5, which permit single-family residential uses plus a few other institutional, civic or public uses typically found in residential neighborhoods. The properties are developed with single-family residences that appear to be in reasonable repair and should have continued economic value as currently zoned. County appraiser data indicates the two residences are valued, for tax purposes, at \$168,200 and \$201,400.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will introduce LC into the East 21st Street North mile segment located west of

North Oliver Avenue and east of North Hillside Avenue. Currently, there is not any LC zoning on either side of East 21st Street North between North Oliver Avenue and Hillside Avenue. There are significant areas of LC zoning located along East 21st Street North, east of North Oliver Avenue, and west of North Hillside Avenue. The LC district permits a much larger number of more intense uses than SF-5 district, including multi-family residential, office and retail commercial uses not requiring significant amounts of outdoor storage or display. The LC district permits building heights up to 80 feet and higher with larger than minimum required building setback; however, compatibility height setbacks would limit building height to 43 feet. Approval of the request will place more intense uses next to large-lot residential uses.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably represent a loss in increased economic return compared to selling the properties at SF-5 rates. Approval would increase the number of LC zoned lots available for development.
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. Applicable commercial location guidelines contained in the “1999 Comprehensive Plan Update” state, in general: 1) commercial sites should be located near arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic; 2) commercial development should have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses and 3) locate commercial uses in compact clusters or nodes versus extended strip developments. The Comprehensive Plan also contains a goal statement, Goal XI that the City should develop, conserve and revitalize housing and neighborhoods that will provide safe, decent, marketable and affordable conditions for all residents. The Comprehensive Plan also contains an objective to minimize the detrimental impact of higher intensity land uses and transportation facilities located near residential living environments.
6. Impact of the proposed development on community facilities: At 40-feet, the half-street right-of-way widths located along the application area are substandard. It is almost certain that if the site is rezoned, the property will convert to uses more intense than single-family residences. More intense uses will generate increased numbers of vehicle trips on substandard street right-of-way.

If the MAPC feels the request is appropriate, the application should be subject to the following Protective Overlay:

- A. Uses permitted shall be limited to the following LC Limited Commercial zoning district uses: single-family residential, duplex, multi-family, assisted living, day care limited, day care general, government service, safety service, animal care limited, automated teller machine, bank or financial institution, convenience store, funeral home, medical service, monument sales, general office, personal care service, personal improvement service, restaurant and general retail provided the restaurant does not exceed 2,000 square feet and does not provide drive-thru or in-car service and no general retail use that exceeds 8,000 square feet in size). The following uses are specifically prohibited: retail liquor store, nightclub in the city, drinking establishment or

- tavern, entertainment establishment, pawnshop or business that accepts vehicle titles or other property as security for loans and drive through services except for banks and pharmacies.
- B. All buildings within the subject property shall share a uniform architectural character, color and same predominate exterior building material. The building walls shall not utilize metal as a predominate exterior façade material.
 - C. Landscaped street yards, buffers and parking lot landscaping/screening shall utilize a shared palette of landscape material, and shall comply with the City of Wichita Landscape Ordinance unless modified by another provision of this Protective Overlay.
 - D. A landscape plan shall be prepared for the above referenced requirement, and shall indicate type, location and specifications for all plant materials.
 - E. Zoning code required screening located along the north and west property lines shall be a masonry wall, a 15-foot wide evergreen landscape yard with plant materials not less than six feet in height and spaced close enough to provide an opaque living wall or earth berm, or some combination of the three, shall be installed. Occupancy permits shall not be issued until a landscaping and screen plan has been approved by the Planning Director.
 - F. The applicant shall dedicate sufficient right-of way to create half-street widths of 75 feet at the intersection tapering down to 60 feet elsewhere along the site street frontages, per City right-of-way width standards.
 - G. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps). All lighting shall be shielded to direct light in a downward direction and directed away from residential areas. Light standards, including the base, shall not exceed 15 feet in height when located within 200 feet of residentially zoned property.
 - H. Building setbacks shall be 25 feet along the north and west property line.
 - I. Maximum building height is limited to 35 feet.
 - J. Rooftop mechanical equipment, trash receptacles, loading docks and loading areas shall be screened from ground level view, and said screening is required to match or be similar to the building façade.
 - K. Signage is limited to that permitted in the NR zoning district. Billboard and/or off-site signage is prohibited.

DALE MILLER, Planning staff presented the Staff Report.

ROBERT KAPLAN, 1600 EPIC CENTER, ATTORNEY REPRESENTING TWO PROPERTY OWNERS RIP GOOCH AND MIKE MARKS said his concern with staff's position is that, in his opinion, the recommendation clearly violates a well-established principle and that is that the land owner is entitled to the most advantageous use of his property available. He said it is called "highest and best." He said almost every application except those whose tax is based on its current use is highest and best use. He said in land use the compatibility with the surrounding area can and should be considered. He mentioned putting a noxious industry in the middle of a residential area. He said on the other hand a developer is not interested in placing commercial in an area that is not surrounded by roofs. He said if you don't have houses, you don't need services. He said it becomes a decision of balancing commercial applications with residential areas. He said in this case, that is exactly what the applicant is doing. He said they are fine with the conditions in the LC zoning and added that the applicant will go farther than those restrictions listed and use a protective overlay that prohibits every single use in LC zoning except the two prospects they are currently working on which are a convenience store/fuel stop and a pharmacy/drug store. He said the convenience store is owned by a popular supermarket store in Wichita. He said the pharmacy is new to Wichita but is developing a national chain. He said all the

applicant needs is those two uses. He said those two uses are services that would be very valuable and available to the neighborhood. He said he thinks a lot of people presented are concerned about what might go into the location and he did not identify specific uses to Planning Staff.

KAPLAN said there will be no traffic access through the neighborhood. He said they are not proposing noxious industry or adult entertainment, or taverns with alcohol beverages. He referred to the architectural rendering of what the corner could look like prepared by Wilson, Darnell and Mann. He said the rendering was taken of an existing convenience store at another location. He said he believes convenience stores and pharmacies are in demand in Wichita and that they are neighborhood services. He said add that to the fact that this is the intersection of two heavily traveled arterials. He said these are major thoroughfares with 25,000 plus cars traveling them per day. He said broken down that is 2,000 cars an hour or 30 plus vehicles every minute. He said that brings him back to his original point which was it is not as much the effect of commercial but telling the land owners they are limited to residential. He said residential is not marketable. He said staff thinks the property is in acceptable condition; however, the applicant says the house is not habitable and cannot be marketed. He said staff recommendation is telling the applicant that they can't develop their property because they can't sell it as a single family residence. He said the property has been sitting vacant for years.

KAPLAN said of the two site plans he has and will commit to, they are only using 10% of the site. He said the site is 127,000 plus square feet and they need about 14,000 square feet. He said the applicant will go to any extent as far as screening and berming. He said they would double the landscape required and install earth berms in addition to a masonry wall. He concluded by stating that the applicant had a meeting tonight with the neighborhood association to discuss the application in more detail. He said if the Commission feels it would be advisable to defer making a decision on the application until after that meeting, the applicant is okay with that also.

RIP GOOCH, #12 CRESTVIEW LAKE ESTATES which he said is close to the corner of 21st Street and Oliver. He said he spent over 15 years giving service to the Wichita community and the State of Kansas. He said under no circumstances would he intentionally do anything to destroy what he has worked so hard to build. He said when he became a City Councilman 21st Street was two-lanes up to Wichita State University with run down properties. He said the City Council worked to clean the area up. He said many people were opposed to that effort and he said he explained that if the area was cleaned up, better businesses would be willing to come to the area in the future. He said he has spent a lot of time trying to make that happen. He said at this time there is an opportunity to make that happen. He said this is a bad time to be in opposition to development. He said this is an opportunity.

STEVE FALKE, #3 CRESTVIEW LAKES ESTATES. Mr. Falke thanked the Commission for allowing the neighbors' time to share their concerns. He said he is a homeowner in the neighborhood where the re-zoning action is being undertaken, and he is currently serving as the president of the Crestview Lakes Homeowner's Association. He said he and many of the homeowners in this area are adamantly requesting the proposed re-zoning at 21st Street and Oliver be denied.

FALKE said their first concern is that there is no appropriate buffer between the proposed re-zoned properties and the adjacent neighborhood. He said the two nearest drives west of the property in question are private drives and the road in this neighborhood is not maintained by the City. He said the neighbors are concerned that commercial development on this corner and the increase in traffic that

comes with it would create a corresponding increase in the amount of traffic on this private drive from motorists thinking they could turn into the neighborhood to turn around. He said this could result in costly damage to the road and would create a financial burden on the homeowners in the association. He referred to a photo that was taken yesterday afternoon facing west on 21st street at Oliver and commented that the Commission can see the heavy amount of traffic already present at the intersection.

FALKE referred to an aerial view of the neighborhood and commented on all the green area. He said this is a unique Wichita neighborhood and is well established in a serene park-like setting just adjacent to the golf course at WSU and the Wichita State Campus. He said the square mile area containing the proposed re-zoned property is dotted with several large ponds and the neighborhood serves as a habitat for a wide range of wildlife and waterfowl which could be threatened should the re-zoning move forward.

FALKE said the majority of the homes close to 21st Street and Oliver are classic, quality construction and sit on estate sized properties of approximately 2 acres each. He said the homes in this area have enjoyed increasing property values over the past decade and this is far from a neighborhood in decline. He said the residents take great pride in their homes and it shows. He said many of the residents in this surrounding area have lived in this neighborhood for many years and the Northeast Heights Neighborhood Association is one of the more active neighborhood associations in Wichita.

FALKE said by comparison, not far from their neighborhood about five miles to the South and slightly west at Kellogg and Hillside a new large scale Quick Trip convenience store has been erected based around their new neighborhood market format. He said when this neighborhood re-zoning was being proposed, the residents of this neighborhood may have been told their property values were in decline and the addition of a new Quick Trip would certainly increase the value of their homes. He showed a photo from August of 2011 of a home during construction of the new Quick Trip at the corner of Lorraine and Orme just behind the new Quick Trip. Lorraine is the buffer street. He showed a picture of the same home taken yesterday afternoon showing many of the windows boarded up and the home falling in to disrepair. He said he was not so sure the homeowner was realizing an increase in property values because of the commercialization in their area. He admitted that he was not comparing apples to apples in the illustration, because the homes and lot sizes in that neighborhood are much smaller, unlike his neighborhood. He said the site also has Lorraine which buffers the back side of the new Quick Trip. He also pointed out several tall light poles that he said he was sure illuminate the parking lot at all hours of the night. He also mentioned that according to the residents in the area, the buffer street is used constantly by gasoline and product delivery trucks who find it much easier to make their supply deliveries by driving around the block and pulling in the back way to the Quick Trip.

FALKE said he was not anti-development and as an entrepreneur and active member of this community he knows what it takes to run a business and earn a living for his family. However, he said there is a time and place and a proper way to manage commercial property development, and this is not the time, and the northwest corner of 21st Street and Oliver is not the place especially when just across the street there is already commercial property that is under-utilized. He also mentioned that the commercial property borders on being an eyesore and that there is certainly plenty of trash and asphalt.

FALKE concluded by adding that there are already plenty of convenience and shopping options within a mile of this location and mentioned a Quick Trip and a brand new Wal-Mart neighborhood market and

pharmacy located just up the street at 13th Street and Oliver. He added that the neighborhood is also not in favor of any additional apartments or student housing. He said there is already a large apartment complex at 29th Street and Oliver, the Grove apartments, that is not fully occupied. He mentioned that just a bit further to the East, only a mile away, there are more gasoline convenience stores, several fast food restaurants, and banks and shopping, including Brittany Center, where there is also property for lease which is under-utilized. He added that one more mile east of that there is world-class shopping and dining at the major corners of 21st and Rock Road with Tallgrass and Bradley Fair Shopping Centers.

FALKE said it is obvious that people don't have to go far to find everything they need in the neighborhood. He said the neighborhood does not require, nor desire, any more commercial services closer than they already are. He said the love the city we are privileged to live in it, but ask the Planning Commission to deny the re-zoning request. He concluded by asking people from the neighborhood at the meeting to stand in support and agreement of his remarks.

CHARLIE RIVERA, 2401 N. PERSHING, PRESIDENT, WILLOWLAKE HOMEOWNERS ASSOCIATION said there are approximately 31 homes consisting of one acre lots in Willowlake and they have been there for approximately 24 years. He said they are concerned about the integrity of the neighborhood. He said they have watched property values in the neighborhood decrease because of lack of care. He mentioned the property at 21st and Oliver and said they can't get a resident because the property just doesn't look good. He said it is a beautiful home and lot but it has not been properly maintained or landscaped. He said there are similar beautiful homes located on busy streets all over the City. He mentioned the argument of the most advantageous use of property; however, he said he believes the rezoning will have the reverse effect on property values in the neighborhood. He said the neighborhood currently has four properties for sale, two of which have been poorly maintained. He concluded by asking that the Planning Commission deny the request for Limited Commercial zoning. He said homes not located in the Crestview and Willowlake area drop in value significantly and they are concerned about the "domino effect". He said a developer could come and purchase 3-4 lots without a challenge. He said the Willowlake association (just like the Crestview HOA) pays to have the grass cut and other upkeep of the park association area. He said if lots are sold to development it may make it difficult to maintain the property.

JULIA FALKE, #3 CRESTVIEW LAKES ESTATES said she was adamantly requesting that this proposed re-zoning request be denied. She briefly reviewed home sales in the neighborhood stating that the values of homes in this area have held or increased with #5 Crestview Lakes being sold in 2000 for \$195,000.00 then more recently in 2007 for an increased price of \$243,000.00. She said #7 Crestview Lakes sold in 2003 for \$200,000.00 and again in 2013 for \$300,000.00. She said a zoning change would negatively affect the home values of the properties adjacent to the proposed lots and then have a domino effect into the neighborhood.

FALKE said some people support limited commercial zoning in some areas due to the run-down condition of the homes and the cost to repair those homes being "prohibitive" and that a better option is to put in new commercial businesses to revitalize the area. She said that is obviously not the condition of their adjacent residential neighborhood and they do not want an increased area for commercial businesses. She said since there is no appropriate buffer such as a street between the proposed and adjacent properties, any development would back right up to those residences. She mentioned that a young couple just moved into #2 Crestview and that it would be tragedy to have purchased the property

specifically for the beauty and privacy in the area to find out that efforts are being made that will change those very things.

FALKE said there is already gas, grocery, pharmacy and other commercial conveniences within a mile or less of the proposed zoning change including a large amount of businesses within the next two miles. She emphasized that the neighborhood does not require nor desire any more commercial spaces any closer than they already are.

FALKE said they discovered this gem in northeast Wichita and love the "country in the city" feel from the serene park-like neighborhood. She said the surrounding area has many wonderful bodies of water that extends this feel well beyond the borders of their private commons lake area. She said introduction of additional commercial space will intrude on the park-like setting of this unique subdivision. She said because of the nearby watershed and wildlife preserve, commercialization of the area, with the potential of added environmental impact, will have a detrimental effect on wildlife. She said development of this corner would most likely involve clearing all or most of the large established trees and surrounding landscaping, intruding on the wildlife and waterfowl habitat and increased traffic puts those animals at greater risk. She said in addition, the introduction of potential underground gasoline storage tanks greatly increases the risk of contamination of the area. She said allowing a zoning change of this type would not promote and protect the preservation of this unique residential area of the city.

FALKE said a rezoning would cause increased security concerns from foot and vehicle traffic with people potentially ignoring the private drive signs and encroaching on the neighborhood private commons area. She said there is the likelihood of the necessity of increased police support and the cost that accompanies that. She added that the fact that there is no buffer area between the proposed development and adjacent residential lots increases the chance for attempted access to those residences.

FALKE mentioned the potential unauthorized increase in vehicle traffic from autos or heavy delivery trucks entering the private road causing additional wear and damage to a road that the city does not maintain. This in turn will cause a financial hardship on the residents for repairs or modifications to try to stop the intrusion.

FALKE said commercial development of the property could cause additional water drainage and runoff issues in the neighborhood with water draining off asphalt or concrete parking areas rather than soaking into the present grassy and landscaped areas causing increased drainage into the neighboring yards with the potential of harmful petrochemicals being carried in.

FALKE concluded by saying if the new zoning is approved, there are no guarantees as to what form the commercial development could take in the future. She said she has received a copy of the staff report recommending that the zoning request be denied and appreciate the inclusion of the protective overlays requested if that recommendation is dismissed. She said the neighborhood would strongly request some additional protective conditions that there are no apartment buildings considering that apartment complexes in the area are not 100% rented, no businesses open later than 9:00 p.m., no alcohol or tobacco sales, no business that plays loud music through a public address system or allows live music to be performed or consists of any type of outdoor seating or gathering, or has gasoline sales. She asked that people from the neighborhood at the meeting stand to show their agreement and support of the concerns and information she presented.

WARREN asked for the exact locations of properties that have sold.

GREG FERRIS, 144 S. BAY COUNTRY COURT said he was present to speak as a family friend. He said this is the corner of a major intersection and in Wichita; citizens are used to major intersections being commercial. He said the private drive will have no use for any commercial development. He said it is too far away from the property, there is no access to the property and; therefore, no reason for anyone to use the neighborhood private drive. He said he understands that the neighbors don't want commercial in their back yard but an adequate buffer would be trees, good screening and perhaps berms and he understands from the Staff Report and photographs that the applicant intends to do that. He mentioned development of the corner of Central and Tyler and how the neighbors were fearful that a car lot would have a terrible impact on their neighborhood; however, trees and berms were planted and that has co-existed for many years in area that was once a wide open space. He urged the Planning Commission to consider the Golden Rules. He commented on the Staff Report with regard to the suitability of the property for which it is developed. He said the property has been on the market for over seven months with not a single offer for residential and he said he believes it will remain that way for a very long time. He said to ask someone to hold a piece property for residential when it has been on the market for a great length of time is not fair. He asked the Commission if they would want to live on the corner of 21st Street and Oliver with the kind of traffic that is present. He said it was appropriate for residential when it was developed on a two-lane road, but now that it is a major arterial it is no longer appropriate. He said commercial property does not negatively affect property values and does not have an impact on residential properties in the area. He mentioned a commercial development near his own residence that had no impact on property values. He said as far as conformance to the Comprehensive Plan, he said that recommends development of commercial near arterial streets and this is on arterial streets. He mentioned noise remediation at the site and development of commercial in compact clusters noting the strip center across the street. He said this meets the requirements of the Comprehensive Plan in some regards and doesn't in other regards. He concluded by saying that he thought this was a "no brainer" when you see what is there now, what is around the location and what they want to develop, it makes sense.

CHRISTINA UNREIN, #7 CRESTVIEW LAKES ESTATES said she was brand new to the neighborhood and she didn't know if she and her husband would have even considered buying a home there if they knew this development was going to take place. She mentioned research they did with the Wichita Police Department before buying and said they were informed that this is a section that is not affected by the bad stuff surrounding the area because of the design. She mentioned that she is a planner by trade and that they also reviewed the Comprehensive Plan which indicated that this area was supposed to be residential in the future. She said she felt the City would stand behind the Plan and keep the neighborhood the way it was. She said she also looked at the covenants that indicated that only single-family residential is allowed in the neighborhood. She mentioned another neighbor who just moved in last month that has a goat. She said she bought that lot to be in town but with a country feel. She said the neighbors do not want a Quick Trip in their backyard. She said the neighborhood association is against this and said she would list the reasons.

UNREIN said the house is occupied and she knows this because she delivers the association newsletter. She commented on the huge commercial sign on the lot, which may be one of the reasons the property is not selling. She also mentioned the price and said the building is run down. She said there are lots of ways to justify why you can't get rid of a property if you are not being reasonable. She said the rezoning would increase intrusion into the privacy of neighbors' backyards, commercial lights, extended

hours of operation, increased litter, offensive odors from gasoline and food waste, trash and noise. She said the neighbors like to hear the sound of nature because the neighborhood is set up in a park-like setting and they enjoy that. She said people say the private road won't be used, but people use it now to turn around because they miss something. She said more and more people are going to be using the neighborhood private drive that the association maintains. She mentioned the Staff Report and the fact that the right-of-ways are not wide enough so there will need to be work done on the roads, which has the potential of requiring that some of the nice old trees be torn out. She said the trees divide the neighborhood from the high traffic areas. She said the neighborhood is also concerned about additional curb cuts and more walkers and bikers from WSU and people in wheelchairs from the Timbers and additional signs and clutter.

UNREIN concluded by mentioning highest and best use of property and said this country works as a society and what is the highest and best use for society overall. She said if the developer wants to help the community go across the street and buy the commercial properties that are blighted. She mentioned the parking on the site plan, building, and drive through and said she doesn't understand how the applicant can provide 90% greenery at the site.

TONY STEPHENSON, 2550 N. PERSHING said he understands people's concerns about zoning where they live, more clutter and people using the small road. He said he doesn't see where this property would cause anyone to drive down the private street. He said he has children who attend WSU and every time there is a football or basketball game any of the primary convenience store/gas station locations are about one mile in either direction. He said neither of those locations are in the best upkeep themselves. He said he worries for his kids when they go to those locations late at night to buy gas or soda. He said if the developer was to put something well-known and established like a Quick Trip, it will not be run down like the other stations and convenience store around the area. He said he and his wife travel to Dillons or another quick shop more than two miles away if they have to buy something at night. He said he believes a development at this location would be more upscale and a nicer place to visit after dark. He concluded by saying he thought this was a nice idea.

JAMES ROSEBORO, 4518 GREENBRIAR, PRESIDENT, NORTHEAST HEIGHTS NEIGHBORHOOD ASSOCIATION which he said includes Willowlakes and Crestview Homeowners Associations. He said he is fully in support of the testimony he had heard today in opposition to this rezoning request. He thanked Mr. Gooch for everything he has done for the 21st Street corridor. He mentioned the Grove development located a mile north that destroyed wildlife, wildlife habitat and trees in the area. He said this area at 21st Street and Oliver is one of the last areas of respectable, upscale homes in the Northeast Heights neighborhood area and he would hate to see that destroyed. He said moving in a Quik Trip or pharmacy will have a detrimental effect on the neighborhood. He mentioned the commercial area across the street and said since two of the major stores left nothing has gone in there to fill the area. He said if the same chain brings in a store with gas tanks and it doesn't work at the location, the neighborhood will be stuck with it again. He said he is against this proposal and he has not talked to anyone in the neighborhood that is for it. He said this is a pristine area with the lakes and the property upkeep and they would like to see it stay that way.

KAPLAN said he can't count the number of times he has obtained zoning over neighborhood protests that they don't need and will not use the services only to see after the location is developed the people cued up outside because there is a sale on plants or something else. He said he can't take those comments about not using the services seriously. He said these companies he is dealing with (the

pharmacy and convenience store) do market studies and know what their markets are. He said these studies are never very far off target. He mentioned the comments about the development being a detriment to neighboring property values. He asked the Planning Commission if anyone has ever presented documentation to show a detrimental value on neighboring properties from a commercial installation/development. He said he has never been furnished any data one way or the other on the issue. He said no one knows. He mentioned the boarded up house at the other location mentioned in previous testimony and said there could be 101 factors why the house was boarded up. He asked how in the world someone can assume the owners left because of construction of a convenience store. He said he would prepare and file a protective overlay with two which were a convenience store/fuel stop and pharmacy. He said they will prohibit everything else which goes beyond the protective overlay that staff has suggested.

MOTION: To give the speaker one additional minute.

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

KAPLAN commented that the other points don't have validity or documentation such as the comments about environmental impact. He said the tanks would have to be removed. He said fuel storage tanks are highly regulated. He said a national chain is not going to walk away from a facility and violate State or Federal regulations so that is not a legitimate objection. He said this fits with the Comprehensive Plan which recommends that commercial development avoid strip centers and interior roadways and locate on arterials. He said there is nothing they are proposing that isn't appropriate.

G. SHERMAN asked if the convenience store would include a car wash.

KAPLAN said not at this time according to the paperwork that he has. He said if that is a preferred prohibition, put it on the protective overlay list and applicant will accept the condition.

B. JOHNSON said apparently staff has just seen the site plan rendering and proposed uses on it. He asked if that changed staff's recommendation.

MILLER said staff would still recommend denial; however, if the Planning Commission decides to approve the request, staff would modify the proposed protective overlay indicate that the following two uses are permitted at the site, those being a convenience store with fuel sales and a pharmacy/drug store and whatever else the Commission feels is appropriate.

WARREN asked the question if this was a vacant lot and you were starting from scratch, would consider putting residential at this location. He commented that there is institutional, a church, catty corner from the location, commercial across the street and a golf course across the street. He said in his mind this is a horrible location for any kind of residence. He said the nature of City's change as they grow and this is one of those instances where it is time for a change. He mentioned several concerns such as lighting and how to diminish the effects on the surrounding residents, how high should the berm be and what type of buffer on top of the berm to protect the residents, establishment of the protective overlay to limit the uses to the two options mentioned by the applicant, water runoff from the site and how to insure that does not affect ponds in the area. He said changing the zoning will very likely

decrease use of the private drive so he doesn't see that as a problem, the parking lot will have large entrances and people will not want to turn around on a busy street.

MILLER referred to Item G of the Staff Report which he said was standard language regarding parking lot lighting to be a maximum of 15 feet within 200 feet of residential as well as being shielded and directed down.

WARREN commented that 200 feet seems like a lot.

MILLER commented that according to GeoZone the property is 300 feet wide. He said standards above 15 feet would be allowed within the first 100 feet right off the corner or he said the Commission could require 15 feet for the entire property. There was discussion concerning the slope of the berm being manageable. He said staff was recommending a 25-foot setback which is the maximum compatibility setback allowed by code based on the width of the property. He said the Commission could set that at 35 feet if they feel that is more appropriate.

WARREN asked how high the berm could be with a 25-foot setback.

MITCHELL gave the formula and indicated for a five foot berm, you would need a 50 foot setback.

DENNIS asked the first speaker (**STEVE FALKE**) if he was going to attend the neighborhood meeting this evening and if the Planning Commission deferred the request, does he think that something will come out of that meeting that will change his mind about the proposed development.

FALKE said he planned on attending the meeting; however, the homeowners in the Crestview Lakes association are unified in wanting denial of the zoning request.

DENNIS asked if the Commission approved a large berm with a masonry wall and lighting shielded off the site.

FALKE said he can't speak for the homeowners.

WARREN asked if Mr. Falke would recommend it.

FALKE said he would not recommend it.

DENNIS asked the President of the Northeast Heights Neighborhood (**JAMES ROSEBORO**) association if he thinks the residents might change their mind or if agreement could be reached between the neighborhood association and the developers.

ROSEBORO said he can't speak for everyone but he hasn't talked to anyone that was in favor of the zoning change. He said he did not foresee this happening. He said more questions have been raised at today's meeting that need to be addressed at tonight's meeting. –

MOTION: To approve subject to staff recommendations including revised lighting, berms as shown on the site plan rendering and protective overlay proposed by the applicant.

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

MITCHELL said he has not heard anything that the property cannot continue to be used with the zoning that is there now. He said because the house is run down and not well maintained is not a reason to change the property to commercial.

G. SHERMAN said with the current configuration he would not want to live on that corner but that fact alone is not a reason to put limited commercial at the location. He mentioned possible office uses. He said he can't think of a worse business to be next to the neighborhood than a convenience store. He said when the four-corner zoning was done all around the City there were other uses that were more compatible between commercial and residential.

DENNIS said he would hate to live in the residence right behind the property. He said he hoped to hear the homeowner and neighborhood representatives would listen and possibly come up with a solution that was satisfactory to the applicant, the neighbors and the Commission. He said he hasn't seen a compelling reason to approve the request because of the homes right behind it will be subject to a lot of problems. He said he would have preferred to defer it, but he won't be voting in favor of the motion.

MCKAY mentioned the commercial property across the street and the Quik Trip down the street. He said the commercial development mentioned at Central and Tyler was a completely different deal with commercial development on all four corners.

SUBSTITUTE MOTION: To deny the application.

MCKAY moved, **MITCHELL** seconded the motion and it carried (7-4).

ANTHIMEDES, GOOLSBY, B. JOHNSON and **WARREN** – No.

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4. **Case No.: CON2013-00021** – Woodland Lake Community Church (owner); SSC/AT&T Mobility, c/o Justin Anderson (applicant) request a City Conditional Use to permit a 120-foot wireless communication facility at Woodland Lakes Community Church on property described as:

LOT 1 EXC CEDAR VIEW VILLAGE ADD BLOCK 1 WOODLAND LAKES COMMUNITY CHURCH ADD

A 40 foot by 40 foot Lease Area and a 20 foot wide Access/Utility/Easement, situated in Lot 1, Block 1, WOODLAND LAKES COMMUNITY CHURCH ADDITION, in Sedgwick County, Kansas, more particularly described as follows:

COMMENCING at the Northwest corner of said Lot 1; thence along the North line of said Lot 1, North 81°51'58" East, a distance of 614.78 feet; thence leaving said North line, South 01°08'02" East, a distance of 341.55 feet to the POINT OF BEGINNING of said Lease Area; thence South 40°28'22" East, a distance of 40.00 feet; thence South 49°31'38" West, a distance of 40.00 feet; thence North 40°28'22" West, a distance of 40.00 feet; thence North 49°31'38" East, a distance of 40.00 feet to the POINT OF BEGINNING. Containing 1,600 square feet.

AND a 20 foot wide Access/Utility Easement, lying 10.00 feet on each side of the following described center line:

COMMENCING at the Northwest Corner of said Lot 1; thence along the West line of said Lot 1, South 00°50'24" East, a distance of 158.12 feet to the POINT OF BEGINNING of said centerline; thence leaving said West line, North 89°09'32" East, a distance of 277.20 feet; thence South 88°30'10" East, a distance of 90.82 feet; thence South 45°55'55" East, a distance of 84.59 feet; thence North 49°37'31" East, a distance of 71.80 feet; thence South 40°14'31" East, a distance of 187.65 feet; thence North 49°26'46" East, a distance of 38.95 feet; thence South 19°39'32" East, a distance of 58.31 feet to the POINT OF TERMINATION.

BACKGROUND: The applicant, AT&T Mobility, is seeking a Conditional Use to permit the construction of a 150-foot tall, wireless, galvanized steel, monopole cell phone tower on the MF-18 Multi-Family-Residential (MF-18) zoned portion of the applicant's church property located on the northeast corner of Greenwich Road and Lincoln Street. The proposed, monopole tower will be built to look like a cross (monocross), located just east and next to the owner's church; built 2003. The 120-foot tall tower will have cross member located at 100 feet, thus achieving the shape of a cross. Per the amended Wireless Communication Facility Ordinance (adopted by the WCC 4-08-08 & BoCC 4-9-08), new wireless communication facilities over 65-feet in height in the MF-18 zoning district may be permitted with a Conditional Use. The site is not in an area where an Administrative Permit (per the above sited amended ordinance) would allow a tower, if it did not exceed the allowed height. The tower/monocross does not meet the compatibility setback standards, as it is located within 10-15 feet of the church's SF-5 Single-Family Residential (SF-5) zoned portion of its land. The applicant is requesting a waiver of the compatibility height standards, which can be considered in the Conditional Use process.

The applicant's RF Engineer has stated that the proposed facility is needed to both maintain and improve phone service in this section of Wichita and Sedgwick County. The wireless facilities map provided by the applicant shows 10 existing facilities within two miles of the site. The applicant has provided current and desired coverage maps. The RF Engineer states that there are facilities (130-180-foot tall towers) within 0.6-0.9 miles of the proposed site that would allow co-location opportunities, but are located too close to the 157-foot tower on the AT&T site located around I-35 and K-96 (approximately a mile away) and as such would result in 'overlapping and redundant coverage' and as such would not provide the expanded coverage the proposed site will.

The site is located south of I-35 Highway in an area developed almost exclusively as single-family residential neighborhoods. SF-5 zoned single-family residences (built 1958-1973) are located south of the site, across Lincoln Street. This neighborhood has a dense hedge-like planting of mature evergreens and deciduous trees between it and Lincoln. There is a church located further east on the south of Lincoln. East of the site is a single duplex located in an otherwise undeveloped MF-18 and SF-5 zoned subdivision. Further east is the SF-5 zoned USD-259 Seltzer Elementary school. West of the site, across Greenwich Road, is an undeveloped GO General Office (GO) zoned property. West and south of the GO site is a SF-5 zoned single-family residential (built mid-late 2000s) subdivision(s) and SF-20 Single-Family Residential (SF-20) zoned ranch land and large tract single-family residences. North of I-35 and south of Kellogg Street/US 54 is an area of LI Limited Industrial (LI), GC General Commercial (GC) and LC Limited Commercial (LC) zoned mix of (but not limited to) large box retail, smaller retail

strips, fast food, restaurants, and car dealerships. The Beechcraft airplane manufacturing facility, with its airstrips, is located approximately a mile northwest of the site.

This proximity to Beechcraft places the site in Area B of the Airport Hazard Zone. Area B has a 75-foot height restriction. Per the City Of Wichita Codes, Sec.28.08.160, a variance from the governing body is required to exceed this 75-foot height restriction and the governing body may refer the application to the MAPC for study and recommendation. The application for variance shall be accompanied by a determination from the Federal Aviation Administration (FAA) as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. The applicant has not at this time supplied the required FAA letter. Such variances may be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice and be in accordance with the spirit of this Code. A copy of the application has to be furnished to the manager of the affected airport(s) for comment as to the aeronautical effects of the variance. If the manager does not respond to the governing body within fifteen days after receipt, the governing body may act on its own to grant or deny the application. There appears to be three other towers between 130-180 feet tall located within the Zone B around Beechcraft and within two-miles of the site. Beechcraft has been given a copy of the Public Hearing notification for comment.

The proposed tower and associated communication frequencies and wattages must meet standards determined by the Federal Aviation Administration (FAA) to pose no hazard to air navigation or interferes with other radio/communication frequencies. The applicant has not provided an analysis of airspace in the area, which must be provided to staff prior to building permits being issued. Tower lighting must meet the FAA requirements for aircraft warning. The proposed galvanized surface of the tower will blend into the sky more readily than a red or white paint, which meets the intent of the "Design Guidelines" of the "Wireless Communication Master Plan." The proposed 120-foot tower must allow co-location for at least two (2) other providers. The applicant has indicated that the tower will have all antenna arrays located within the proposed tower.

CASE HISTORY: The site is located on Lot 1, Block 1, Woodland Lakes Community Church Addition, which was recorded with the Register of Deeds, April 2, 2002. ZON2000-00029 rezoned a portion of the site from SF-6 Single-Family Residential to MF-18. CON2002-00027 permitted day care on the site. BZA2002-00050 was an adjustment that waived the screening requirement on the east side of the property.

ADJACENT ZONING AND LAND USE:

NORTH: SF-5, MF-18, I-35, LI, GC, LC, SF-5	Undeveloped land, interstate highway, large retail complex car lots, single-family residences
SOUTH: SF-5,	Single-family residences, church
EAST: MF-18, SF-5	A duplex, mostly undeveloped subdivision, elementary school single-family residences
WEST: GO, SF-5, SF-20	Large undeveloped lot, single-family residences, large tract residences

PUBLIC SERVICES: No municipally supplied public services are required. The applicant will extend electrical and phone service to the site. The site has proposed access easement to Greenwich Road, a four-lane arterial street, with a center turn lane at this location.

CONFORMANCE TO PLANS/POLICIES: Per the amended/updated Wireless Communication Facility Ordinance (March 2011), new wireless communication facilities over 65 feet in height in the MF-18 zoning district may be permitted with a Conditional Use.

The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan requires a Conditional Use for new undisguised ground mounted facilities over 65-feet in height in the MF-18 zoning district and that they comply with the compatibility setback standards. The site and its 120-foot tall tower disguised as a cross does not meet those setback standards, as it abuts the owner's SF-5 zoned church site; the applicant is requesting a waiver of the compatibility setback standards. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area as much as possible. The proposed 120-foot tower/monocross is designed to look like a cross, thus advertising the existing church (built 2003). The site is adjacent to I-35 Highway on its north side. The nearest residential uses are a MF-18 zoned duplex and an SF-5 zoned residence located approximately 340-350 feet away. Most residential development is located 650-1,100 feet away, across Greenwich Road, Lincoln Street or east of a public elementary school; 2) Minimize the height, mass, or proportion. The tower/monocross is similar in height to other monopole towers in the area. The mass and proportion of the tower will be somewhat unique because of its cross shape, however it does not appear dissimilar to a conventional monopoles in its mass around the base; 3) Minimize the silhouette. Monopoles and certain lattice type structures (think City microwave towers) are recommended for up to 150-feet, with antennas mounted flush to the support structure over triangular "top hat" antenna arrays. The proposed 120-foot monocross tower will have all antenna arrays located inside the monocross; 4) Use colors, textures, and materials that blend in with the existing environment. The monocross will have a galvanized surface, which will blend into the sky more readily than red or white paint; 5) Be concealed or disguised as a flagpole, clock tower, or church steeple. As stated the proposed 120-foot tall tower will be designed to look like a cross (monocross) and will be located behind/on the east side of the owner's church; 6) Be placed in areas where trees and/or buildings obscure some or all of the facility. The church will block the lower portion of the monocross from the residential properties located west of it. A mixed hedge of mature evergreens and deciduous trees, located south of the site across Lincoln Street screen the lower portions of the site from the those residences located south of the site; 7) Be placed on walls or roofs of buildings. The application doesn't do this; 8) Be screened through landscaping, walls, and/or fencing. Besides existing trees providing landscaping, the applicant is proposing a split face concrete masonry block wall around the compound; and 9) Painting towers red and white instead of using strobe lighting. The applicant has stated that there will be no strobes and that it will be a galvanized steel finish. NOTE: Since the time the Wireless Communication Master Plan was first adopted, the FAA changed their regulations to require daytime strobe lighting; whereas, when the plan was adopted, the FAA allowed painted towers red and white instead of using strobe lighting.

The 2030 Wichita Functional Land Use Guide depicts this location as being appropriate for "major institutional," which contains institutional facilities of significant size and scale of operation. The range of uses includes: government facilities, military bases, libraries, schools, cemeteries, churches, hospitals and medical treatment facilities. A wireless communication facility is a commercial use.

Because of the site's proximity to the Beechcraft airplane manufacturing facility, with its airstrips, the site is located within in Area B of the Airport Hazard Zone. Area B has a 75-foot height restriction. Per the City Of Wichita Codes, Sec.28.08.160, a variance from the governing body is required to exceed this 75-foot height restriction and the governing body may refer the application to the MAPC for study and recommendation. A FAA determination to the effect of the proposal/variance on the operation of air navigation facilities and the safe, efficient use of navigable airspace is required. The manager of the affected airport(s) is afforded the opportunity for comment as to the aeronautical effects of the variance. The Wireless Master Plan's guidelines for locating new support structures states that they should not be located in the flight paths of local airports where they would constitute a potential hazard to air safety.

RECOMMENDATION: The primary consideration in this request is the location of the site within Beechcraft's Area B of the Airport Hazard Zone. Area B has a 75-foot height restriction, which the proposed 120-foot tall tower surpasses. This means a variance from the governing body is required to exceed this 75-foot height restriction and the governing body may refer the application to the MAPC for study and recommendation. A FAA determination to the effect of the proposal/variance on the operation of air navigation facilities and the safe, efficient use of navigable airspace is required. The manager of the affected airport(s) is afforded the opportunity for comment as to the aeronautical effects of the variance. However, there appears to be three other towers between 130-180 feet tall located within the Zone B around Beechcraft and within two-miles of the site. Based upon this factor and the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

- A. This request is contingent upon approval by the FAA and Beechcraft in determining the proposed 120-foot tall tower/monocross is not a hazard to the operation of air navigation facilities and that a safe, efficient use of navigable airspace is not compromised by the proposed tower. Upon approval by the FAA, Beechcraft and the MAPC the application shall proceed to City Council for approval.
- B. All requirements of Art. III Sec. III.D.6.g. of the Unified Zoning Code shall be met. Waive the compatibility setback requirement.
- C. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- D. The support structure shall be a "monocross" design, as shown on the elevation and that generally conforms to the approved site elevation and that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- E. The support structure shall not exceed 120 feet in height and shall be designed and constructed to accommodate communication equipment for at least two (2) wireless service providers.
- F. The tower shall conform to FAA regulations in regards to analysis of airspace in the area, which includes conformation that the height of the tower is not a hazard to air navigation (including the need or not for lighting) and that the tower does not interfere with other radio/communication frequencies: see condition A. The applicant shall submit a current copy of FAA approval to the MAPD and the Code Enforcement Office prior to the issuance of a building permit.
- G. The tower site located shall be developed in general conformance with the approved revised site and a landscape plan. These plans must show the type and size of fencing around the site, parking, all light poles, lights, power poles, cabinets, equipment or buildings within the fenced in site or in the immediate area if it is to be used by the site. The plan must identify existing and/or proposed trees and shrubs, give their total numbers and their general size to determine if it meets screening

requirements of the Unified Zoning Code (UZC) Art. IV, Sec. IV-B.3.b.1. The site plan must identify the utility access easement as being current or proposed. If it is proposed it must be recorded. If a surface is needed for the drive/access easement, it must be approved by the Zoning Administrator. All improvements and construction of the facility/tower shall be completed within a year and before the facility becomes operational.

- H. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations. Provide the Stormwater Engineer with any required plans for review and approval of the site.
- I. 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 VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located south of I-35 Highway in area developed almost exclusively as single-family residential neighborhoods. SF-5 zoned single-family residences (built 1958-1973) are located south of the site, across Lincoln Street. This neighborhood has a dense hedge-like planting of mature evergreens and deciduous trees between it and Lincoln. There is a church located further east on the south of Lincoln. East of the site is a single duplex located in an otherwise undeveloped MF-18 and SF-5 zoned subdivision. Further east is the SF-5 zoned USD-259 Seltzer Elementary school. West of the site, across Greenwich Road, is an undeveloped GO General Office (GO) zoned property. West and south of the GO site is a SF-5 zoned single-family residential (built mid-late 2000s) subdivision(s) and SF-20 Single-Family Residential (SF-20) zoned ranch land and large tract single-family residences. North of I-35 and south of Kellogg Street/US 54 is an area of LI Limited Industrial (LI), GC General Commercial (GC) and LC Limited Commercial (LC) zoned mix of (but not limited to) large box retail, smaller retail strips, fast food, restaurants, and car dealerships. The Beechcraft airplane manufacturing facility, with its airstrips, is located approximately a mile northwest of the site.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned MF-18 and is currently used as part of the owner's Church. The owner's church property is also zoned SF-5. A church is permitted by right in the SF-5 and MF-18 zoning districts.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The 150-foot tall, wireless, galvanized steel, monopole cell phone tower is designed to look like a cross, thus advertising the owner's church. The conditions of approval will add solid screening and landscaping around the site, to help minimize the eye level visual impact.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: Pages 4 and 5 of the Conformance to Plans/Policies of this report address this.
5. Impact of the proposed development on community facilities: FAA and Beechcraft approval should ensure that the proposed tower is not a hazard to air navigation (including the need or not for lighting) and that the tower does not interfere with other radio/communication frequencies.

BILL LONGNECKER, Planning staff presented the Staff Report.

GOOLSBY asked about any case history on changing the normal shape of a cell tower.

LONGNECKER said the only case he could find since he has been with the City is the Gump tower flagpole case located directly south of Eastborough along Kellogg at the old Gump Veterinarian site. He said the case has a convoluted history in that application was made three different times. He said there were multiple recommendations including approval and denial. He said ultimately the case filed in 2008 was approved which was for a 160-foot flagpole tower. He said the courts sent it back to the City Council saying that you couldn't base a denial on aesthetics. He said that was the only "stealth" tower case he could find and added that there have been towers located in parks on light poles.

G. SHERMAN commented that typically approval requires the applicant allow other cell users on the tower.

LONGNECKER said part of the application requires the applicant to provide a survey of towers in the area. He said they noted there were three towers within two miles that had co-location capabilities. He said one was located too close to AT&T's tower at I-35 and K-96 and didn't meet their coverage and one 120-foot tower off of Zelda and Kellogg was less than one-quarter mile from Beechcraft.

DENNIS asked if this was approved, would it preclude the school from building their own tower.

LONGNECKER mentioned the discussion regarding monopole versus lattice towers. He said some monopole towers can meet the sway standards required for the microwave system that the school system uses. He said the way this tower is built; the school could not locate on it. He said the school board would have to go through the application process to build a tower and added that approval of this application would not preclude the school board from doing that.

JUSTIN ANDERSON, 9900 W. 109TH STREET, OVERLAND PARK, KANSAS 66210 said staff has done a great job of explaining the nuts and bolts of the case. He said the site is designed as a cross, which complements the existing use of the property which is Woodland Lake Community Church. He said there are depictions of crosses on various sides of the church. He said there are five canisters on the tower that allow for co-location on the site. He said they are using a split faced wall to screen the mechanics. He said they haven't had any opposition or feedback from the neighbors and that they have posted the required zoning application sign. He said this tower covers the gap in the system from the tower in the southwest and the tower in the northeast.

FOSTER said the cross creates another obstruction in the flight zone and asked if the cross part is necessary for function of the tower.

ANDERSON said the cross is not necessary, but added that it was suggested by other bodies. He said they went with the use of the property and used a "mono cross" which is what they call it. He said they can strip off the cross if that is a concern and still provide the same use with the five canisters. He said that there are no electronics or mechanics located in the cross.

FOSTER said he is concerned about the MF-18 Multi-family Residential zoning nearby. He asked what was the minimum height the tower could be and still function for them.

ANDERSON said they are at the minimum height. He said the original design was between 135-140 feet; however, since the tower is located in a flight, zone they did studies at 130 and 125 feet and came to a minimum of 120-feet.

G. SHERMAN asked about the FAA’s response.

LONGNECKER stated staff has not gotten a reply from the FAA; however, they are aware of the application. He added that the application has also been forwarded to Beechcraft for comment. He said the application will not be forwarded to the governing body without recommendations and comments from those two entities.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **MITCHELL** seconded the motion.

FOSTER mentioned previous discussion about the Communications Plan and the hundreds of sites that will need to be filled in over years to develop a full system. He asked if the Commission was going to continue to see this type of “fill in” situation over the years.

LONGNECKER said he believes the system is entering the third phase of coverage which means staff will be looking at more coverage in close proximity to single-family homes and residential development.

The **MOTION** carried (10-1). **FOSTER** – No.

OTHER ITEMS/ADJOURNMENT

DIRECTOR SCHLEGEL mentioned that the City has withdrawn the oil well case.

The Metropolitan Area Planning Commission adjourned at 3:05 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