

**WICHITA-SEDGWICK COUNTY**  
**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**April 10, 2014**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 10, 2014 at 1:37 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Don Klausmeyer; Chair; Matt Goolsby; Vice Chair; David Dennis; David Foster; Bill Johnson; Joe Johnson; John McKay Jr.; Carol Neugent; and Bill Ramsey. Debra Miller Stevens; M.S. Mitchell; Don Sherman; George Sherman and Chuck Warren 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, Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. Approval of the March 6 and March 20, 2014 meeting minutes.

**MOTION:** To approve the March 6, 2014 meeting minutes, as amended.

**DENNIS** moved, **MCKAY** seconded the motion, and it carried (7-0-2).

**J. JOHNSON** and **NEUGENT** - Abstained.

**MOTION:** To approve the March 20, 2014 meeting minutes, as amended.

**DENNIS** moved, **MCKAY** seconded the motion, and it carried (6-0-3). **B. JOHNSON,**

**J. JOHNSON** and **NEUGENT** – Abstained.

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2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2014-00005: Final Plat – HOOVER INDUSTRIAL PARK ADDITION**, located on the southeastern corner of K-96 Highway and Hoover Road. (COUNTY 3 MILE RING)

NOTE: This unplatted site is located in the County adjoining Wichita's boundary. The applicant requests that this plat remain in the County and be annexed upon the extension of city services. The applicant has requested a zone change (ZON2013-00040) from SF-20 Single-family Residential to LI Limited Industrial.

The Subdivision Committee may recommend a modification of the design criteria in Article 7 of the Subdivision Regulations only if it finds that the strict application of the design criteria will create an unwarranted hardship, the proposed modification is in harmony with the intended purpose of the Subdivision Regulations and the public safety and welfare will be protected.

**STAFF COMMENTS:**

- A. City of Wichita Public Works and Utilities Department advises that water (transmission) is available to serve the site and is subject to transmission in-lieu-of-assessments. The applicant needs to extend

water (distribution) to serve all lots. Sanitary sewer is not available. A petition is needed to guarantee extension of sewer (main and lateral). The applicant must agree to an additional 50-foot utility easement for a future raw water line. The petitions will include language that consent to annexation would occur when the petition is activated to extend service.

- B. On the final plat, the platlor's text shall include language that the utility easements are hereby granted as indicated for the construction and maintenance of all public utilities.
- C. On the final plat, the platlor's text shall include language that the drainage and utility easement is hereby granted as indicated for drainage purposes and for the construction and maintenance of all public utilities.
- D. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- E. County Public Works has received the drainage concept as requested. City Stormwater Management is in agreement with the proposed drainage concept. The landowner will need to obtain an agreement from KDOT to pump their site's runoff to State right-of-way. Additional detail will need to be provided with the drainage plan with regards to the site's downstream runoff patterns. Additional downstream drainage improvements may need to occur to support the pumped runoff from the proposed detention facility.
- F. County Surveying advises that in the legal description "Township 26" needs removed.
- G. The plat proposes two street openings along Hoover and complete access control along the remaining street frontage. County Public Works requests complete access control along the westerly 75 feet of both 39th and 41st Streets North. The final plat shall reference the dedication of access controls in the platlor's text.
- H. On the final plat, the platlor's text shall note the dedication of the streets to and for the use of the public.
- I. Sedgwick County Fire Department advises that the plat will need to comply with the Sedgwick County Service Drive Code.
- J. 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.
- K. The final plat shall state in the platlor's text the purposes of the proposed reserves as well as the ownership and maintenance responsibilities.
- L. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a 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.

- M. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- N. The 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.
- O. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- 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 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 disk (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 disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

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

**DENNIS** moved, **NEUGENT** seconded the motion, and it carried (9-0).

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**2-2. SUB2014-00009: Final Plat – CASTLEGATE ADDITION**, located on the north side of Central, west of 119th Street West.

NOTE: This is a replat of a portion of the Dan Blasi Addition in addition to unplatted property. A zone change (ZON2014-00001) has been approved from SF-5 Single-family Residential to MF-18 Multi-family Residential for Lot 1, Block A.

STAFF COMMENTS:

A. City of Wichita Public Works and Utilities Department requests the extension of water (transmission and distribution) and the extension of sewer (mains and laterals) to serve all lots.

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 drainage plan subject to the following:

1. An offsite drainage easement shall be recorded with the plat.
2. Lot 1, Block A shall have a storm sewer sized or a drainage reserve defined for the proposed drainage ditch.
3. A preliminary master lot grading plan shall be submitted.
4. The developer shall submit guarantees/petitions for the public drainage improvements.

D. Traffic Engineering has approved the access controls. The plat proposes complete access control along Central except for one street opening.

E. The Subdivision Regulations limit loop streets to no more than 48 lots served by a 32-foot narrow local residential street. The Subdivision Committee recommends a modification of the design criteria in Article 7 of the Subdivision Regulations as it finds that the strict application of the design criteria will create an unwarranted hardship, the proposed modification is in harmony with the intended purpose of the Subdivision Regulations and the public safety and welfare will be protected.

- F. The final plat denotes a 32-foot right-of-way extending to Cindy to the east and an access easement extending to Azure to the north. The access easement shall be labeled as a “public sidewalk easement” and referenced accordingly in the plat’s text.
- G. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all loop streets. In the event the applicant proposes an alternate sidewalk plan located within Reserve F, this sidewalk shall be designated in the plat’s text as a “public sidewalk”. All public sidewalks shall be included within the paving petition.
- H. Since Reserve F includes a swimming pool, a site plan shall be submitted with the final plat for review by MAPD. The site plan shall include the information indicated in the Subdivision Regulations. The design for the pool must be submitted to Environmental Health for review prior to issuing a building permit for the pool.
- 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. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- L. GIS has approved the plat’s street names.
- M. The applicant has included a Note that all lots shall have a 5-foot interior side yard setback. The Zoning Code allows 5-foot side yards on lots up to 6,000 square feet; however 6 feet is required for larger lots. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- N. City Fire Department has requested a 20-foot entrance at Central for fire apparatus. The applicant shall meet with City Fire Department to discuss this issue.
- O. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- P. The plat’s text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.

- Q. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- S. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one 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. Westar Energy has requested additional utility easements to be platted on this property. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- X. A compact disk (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 disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

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

**DENNIS** moved, **NEUGENT** seconded the motion, and it carried (9-0).

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- 2-3. SUB2014-00014: One-Step Final Plat – TALLGRASS VILLAS ADDITION,**  
located north of 21st Street North, east of Rock Road.

NOTE: This is an unplatted site located within the City. This site is also contained within Parcel 12B of the Tallgrass Community Unit Plan (DP-96). Townhome condominiums are proposed in conformance with the CUP.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department requests the extension of sanitary sewer (lateral) to serve the lot. Water is available subject to in-lieu-of-assessments (transmission and distribution). A utility easement at the northeast corner is needed for the existing sewer line.
- 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 drainage plan subject to an offsite drainage easement being dedicated as necessary for the construction of the ditch or offsite stormwater sewer. A drainage easement corner clip may also be necessary in the northeast corner of the proposed lot.
- D. A CUP adjustment is needed so that the perimeter of the proposed residential block matches the perimeters of the CUP parcel boundaries.
- E. The front and rear setbacks do not conform to the building setback lines which were established by the CUP. An adjustment to the CUP will be needed.
- F. 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.
- G. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- I. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- K. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- N. A compact disk (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 disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

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

**DENNIS** moved, **NEUGENT** seconded the motion, and it carried (9-0).

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**2-4. SUB2014-00015: One-Step Final Plat – DAVID & PALMER ADDITION**, located on the south side of 29th Street North, west of Broadway.

NOTE: This is an unplatted site located within the City. This site is also contained within Parcel 12B of the Tallgrass Community Unit Plan (DP-96). Townhome condominiums are proposed in conformance with the CUP.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department requests the extension of sanitary sewer (lateral) to serve the lot. Water is available subject to in-lieu-of-assessments (transmission and distribution). A utility easement at the northeast corner is needed for the existing sewer line.
- 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 drainage plan subject to an offsite drainage easement being dedicated as necessary for the construction of the ditch or offsite stormwater sewer. A drainage easement corner clip may also be necessary in the northeast corner of the proposed lot.
- D. A CUP adjustment is needed so that the perimeter of the proposed residential block matches the perimeters of the CUP parcel boundaries.

- E. The front and rear setbacks do not conform to the building setback lines which were established by the CUP. An adjustment to the CUP will be needed.
- F. 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.
- G. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- I. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- N. A compact disk (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 disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

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

**DENNIS** moved, **NEUGENT** seconded the motion, and it carried (9-0).

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**2-5. SUB2014-00016: One-Step Final Plat – DEVLIN AUTO REALTY ADDITION,**  
located on the southwest corner of Douglas and Hydraulic.

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

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that the site is currently being served by water and sewer.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the applicant's drainage plan.
- D. The plat proposes complete access control along Douglas and two access openings along Hydraulic. Traffic Engineering has approved the south opening along Hydraulic. Complete access control is needed along the north 70 feet of Hydraulic.
- E. A block number or letter and a lot number shall be denoted on the face of the plat.
- F. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- G. The legal description needs corrected to Township 27 South.
- H. County Surveying advises that the 35.00' (D) along Hydraulic needs removed and 37.4' needs added at the north line per City Resurvey of 1962.
- I. The plat name needs corrected in the MAPC certificate.
- J. The standard language regarding vacation statutes need to reference "K.S.A. 12-512b, as amended".
- K. 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.)
- L. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- M. 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.

- N. 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.
- O. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one 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.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- R. A compact disk (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 disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

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

**DENNIS** moved, **NEUGENT** seconded the motion, and it carried (8-0-1). **B. JOHNSON** – Abstained.

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**3. PUBLIC HEARING – VACATION ITEMS**

- 3-1. **VAC2014-00004: City request to vacate a platted easement on property**, generally located south of 2nd Street, a block west of West Street on the east side of Florence Street (150 N Florence St).

**OWNER/APPLICANT:** James L. Marcotte (owner/applicant)

**LEGAL DESCRIPTION:** Generally described as vacating the platted 10-foot wide utility easement running parallel to the south lot lines of Lots 2 & 3, Curtis Grove Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located south of 2nd Street, a block west of West Street on the east side of Florence Street (WCC #VI)

**REASON FOR REQUEST:** No utilities located in easement

**CURRENT ZONING:** The site is zoned MF-18 Multi-Family Residential. Abutting northern and adjacent southern and western properties are zoned SF-5 Single-Family Residential. Adjacent eastern properties are zoned LC Limited Commercial.

The applicant proposes to vacate the platted 10-foot wide utility easement running parallel (west-east) to the south lot lines of Lots 2 & 3, Curtis Grove Addition. The subject easement intersects with a platted 20-foot wide (south-north) utility easement that runs parallel to the common south-north lot line of the subject lots. There is a sewer line and manhole located in the platted 20-foot wide utility easement. The Curtis Grove Addition was recorded with the Register of Deeds September 17, 1973.

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

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

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 March 20, 2014, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by vacating 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) Retain the east 10 feet and the west 10 feet of the subject easement that is located on both sides of the common lot line of Lots 2 & 3, Curtis Grove Addition, to cover the south-north sewer line and manhole.
- 2) Provide any needed easements for relocated utilities, prior to this case going to City Council for final action. Contact Marsha Jesse, Construction Services Representative for Westar at 261-6734.
- 3) 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.

- 4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE’S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Retain the east 10 feet and the west 10 feet of the subject easement that is located on both sides of the common lot line of Lots 2 & 3, Curtis Grove Addition, to cover the south-north sewer line and manhole.
- (2) Provide any needed easements for relocated utilities, prior to this case going to City Council for final action.
- (3) 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.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

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- 3-2. **VAC2014-00005: City request to vacate a portion of a utility easement dedicated by separate instrument on property,** generally located midway between 21st and 29th Streets North, on the west side of Maize Road.

**OWNER/APPLICANT:** Target Corporation (owner) Slawson Commercial Properties, c/o Jerry Jones (applicant) PEC, c/o Charlie Brown (agent)

**LEGAL DESCRIPTION:** Generally described as vacating the north approximately 290 feet of the 20-foot wide utility easement dedicated by separate instrument (FLM 2833 – PG 1975) located approximately 148 feet west of the east lot line of Lot 21, Block 9, Evergreen Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located midway between 21st and 29th Streets North, north of Central Park Street, on the west side of Maize Road (WCC #V)

**REASON FOR REQUEST:** Future development

**CURRENT ZONING:** The site is zoned (LC) Limited Commercial. Abutting western and adjacent southern and eastern properties are zoned LC. Abutting and adjacent northern properties are zoned LC and SF-5 Single-Family Residential. The site is located within PO #49.

The applicant proposes to vacate the north approximately 290 feet of the 20-foot wide utility easement dedicated by separate instrument (FLM 2833 – PG 1975) located approximately 148 feet west of the east lot line of Lot 21, Block 9, Evergreen Addition. There is a sewer line and manholes located in the subject utility easement. The applicant proposes to remove and relocate the sewer line and manholes. The Evergreen Addition was recorded with the Register of Deeds August 31, 1998.

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 utility easement dedicated by separate instrument.

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 March 20, 2014, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by vacating the described portion of the utility easement dedicated by separate instrument, and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Provide Public Works with a PPS for review and approval of the relocation of the sewer line and manholes. The approved PPS# will be provided to the Planning Department, prior to this case going to City Council for final action. Relocation and the reconstruction of utilities/sewer line and manholes made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and at the applicant's expense.

Provide a utility-sewer easement with original signatures to Planning to be sent to City Council for subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.

- (2) Provide any needed easements for any other utilities impacted by the vacation, prior to this case going to City Council for final action. Relocation and the reconstruction of any other utilities

made necessary by this vacation shall be the responsibility and at the expense of the applicant. Contact Marsha Jesse, Construction Services Representative for Westar at 261-6734.

- (3) All improvements shall be according to City Standards and at the applicant's expense. Provide Planning with any needed confirmation of the completion of any relocation and reconstruction of any other utilities, prior to this case going to City Council for final action.
- (4) 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.
- (5) If needed apply for an adjustment to PO #49.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Public Works with a PPS for review and approval of the relocation of the sewer line and manholes. The approved PPS# will be provided to the Planning Department, prior to this case going to City Council for final action. Relocation and the reconstruction of utilities/sewer line and manholes made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and at the applicant's expense.  
  
Provide a utility-sewer easement with original signatures to Planning to be sent to City Council for subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) Provide any needed easements for any other utilities impacted by the vacation, prior to this case going to City Council for final action. Relocation and the reconstruction of any other utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Contact Marsha Jesse, Construction Services Representative for Westar at 261-6734.
- (3) All improvements shall be according to City Standards and at the applicant's expense. Provide Planning with any needed confirmation of the completion of any relocation and reconstruction of any other utilities, prior to this case going to City Council for final action.
- (4) 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.

- (5) If needed apply for an adjustment to PO #49.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

- 3-3. **VAC2014-00006: City request to vacate a portion of a platted street side yard setback on property,** generally located east of Woodlawn Boulevard, south of 9th Street, on the northwest corner of Stratford and Cresthill Roads (705 N Stratford Lane).

**OWNER/AGENT:** Charles Mizer & Marlene Warren (owners), SPT Architecture, c/o Brad Teeter (agent)

**LEGAL DESCRIPTION:** Generally described as vacating the platted 15-foot street side yard setback located parallel to the south property line of Lot 16, Block R, First Addition to Woodlawn Village Addition & the Cresthill Road right-of-way, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located east of Woodlawn Boulevard, south of 9th Street, on the northwest corner of Stratford and Cresthill Roads (705 N Stratford Lane - WCC #II)

**REASON FOR REQUEST:** Build a detached garage

**CURRENT ZONING:** Subject property and all adjacent and abutting properties are zoned SF-5 Single-Family Residential (SF-5)

The applicants are requesting consideration for the vacation of a portion of the platted 15-foot street side yard setback located parallel to the south property line of Lot 16, Block R, First Addition to Woodlawn Village Addition and the Cresthill Road right-of-way. The subject corner lot is zoned SF-5 Single-Family Residential. The Unified Zoning Code's (UZC) minimum street yard setback for the SF-5 zoning district is 15 feet, i.e., the same as the subject site's platted 15-foot street side yard setback. If the setback was not platted the applicants could have applied for an Administrative Adjustment to reduce the street side yard setback by 20%, resulting in a 3 foot reduction. To reduce the subject setback by more than 20% requires a variance, which is a separate public hearing process. The applicant has filed for a variance, BZA2014-00018, to reduce the street side yard setback to 5 feet. The Wichita-Sedgwick County Board of Zoning Appeals (BZA) will consider BZA2014-00018 at their April 10, 2014 meeting. There are no platted easements located within the setback. Water is located in the right-of-way and sewer is located in the back yard on the north side of the lot. Stormwater does not appear to

be impacted. The First Addition to Woodlawn Village Addition was recorded with the Register of Deeds April 17, 1954.

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

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 March 20, 2014, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by vacating the described portion of the platted street side yard setback, and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate only the east 3 feet of the platted 15-foot street side yard setback located parallel to the south property line of Lot 16, Block R, First Addition to Woodlawn Village Addition and the Cresthill Road right-of-way.
- (2) Further reduction of the platted street side yard setback is contingent on approval by the BZA at their April 10, 2014 meeting of BZA2014-00018, to reduce the street side yard setback to 5 feet is.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide Public Works/Water & Sewer and franchised utilities/Westar with any needed plans for review for location of utilities. Provide a guarantee or approved plans for the relocation of any utilities. This must be provided to Planning prior going to City Council for final action
- (4) All improvements shall be according to City Standards.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only the east 3 feet of the platted 15-foot street side yard setback located parallel to the south property line of Lot 16, Block R, First Addition to Woodlawn Village Addition and the Cresthill Road right-of-way.
- (2) Further reduction of the platted street side yard setback is contingent on approval by the BZA at their April 10, 2014 meeting of BZA2014-00018, to reduce the street side yard setback to 5 feet is.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide Public Works/Water & Sewer and franchised utilities/Westar with any needed plans for review for location of utilities. Provide a guarantee or approved plans for the relocation of any utilities. This must be provided to Planning prior going to City Council for final action
- (4) All improvements shall be according to City Standards.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

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- 3-4. **VAC2014-00007: City request to vacate a portions of a platted easement, an easement dedicated by separate instrument, platted access control and an access easement on property,** generally located south of K-96 on the west side of Maize Road.

**OWNER/AGENT:** QuikTrip West, Inc., c/o Joe Kim (owners), MKEC, c/o Brian Lindebak (agent)

**LEGAL DESCRIPTION:** Generally described as vacating (a) the platted 60-foot wide access easement that was located along the common north-south lot line of Lots 1 & 2, (b) a 20-foot wide utility easement dedicated by separate instrument (DOC# FLM/PG 29114441), (c) vacate the platted 60-foot wide right-in – right-out access onto Ridge Road to allow full movement access onto Ridge Road, from Lot 1, and (d) vacate the 20-foot wide platted utility easement that runs parallel to the north lot lines of Lot 1, all in the North Ridge Village Addition, Wichita, Sedgwick County, Kansas. (see attached legal)

**LOCATION:** Generally located south of K-96 on the west side of Maize Road & the south side of West Village Circle right-of-way (WCC #V)

**REASON FOR REQUEST:** Build a QuikTrip convenience store

**CURRENT ZONING:** Subject property and abutting western and southern and adjacent northern properties are zoned LC Limited Commercial. Adjacent eastern property is zoned SF-20 Single-Family Residential. Subject property is located within Community Unit Plan CUP DP-280

The applicants are requesting consideration to:

- Vacate the platted 60-foot wide access easement that was located along the common north-south lot line of Lots 1 & 2, North Ridge Village Addition. *There appears to be a boundary shift between Lots 1 & 2, thus the subject access easement is located entirely within Lot 1. There is no access easement on the abutting southern properties (Lots 2 & 3, North Ridge Addition, CUP DP-250) that would connect to the subject access easement. There is no platted access control along the subject lots' West Village Circle street frontage. The subject lots are located within CUP DP-280.*
- Vacate a 20-foot wide utility easement dedicated by separate instrument (DOC# FLM/PG 29114441) located within the west 20 feet of (a) of Lot 1, North Ridge Village Addition. *There is a sewer line located within this easement that will need to be relocated/abandoned.*
- Vacate the platted 60-foot wide right-in – right-out access onto Ridge Road to allow full movement access onto Ridge Road, from Lot 1 North Ridge Village Addition. *The application is requesting an additional 10 feet to add to the platted access's 60-foot width and to change it from right-in – right-out to full movement.*
- Vacate the 20-foot wide platted utility easement that runs parallel to the north lot line of Lot 1, North Ridge Village Addition. *There is a waterline located within the West Village Circle right-of-way which runs parallel to, but outside of the 20-foot wide platted utility easement located on the north side of the subject site.*

The North Ridge Village Addition was recorded with the Register of Deeds April 13, 2005.

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

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 March 20, 2014, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by vacating the described portion of a platted access easement, a utility easement dedicated by separate instrument, platted

access control, and a 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) Vacate platted 60-foot wide access easement that was located along the common north-south lot line of Lots 1 & 2, North Ridge Village Addition.
- (2) Vacate the 20-foot wide utility easement dedicated by separate instrument (DOC# FLM/PG 29114441) located within the east 20 feet of (a) of Lot 1, North Ridge Village Addition, contingent on the approval (by Public Works/Water & Sewer) of a PPS for the abandonment and relocation of the existing sewer line. All improvements will be per City standards and at the applicant's expense. The approved PPS# must be provided to Planning prior to the case going to City Council for final approval.
- (3) Dedicate a sewer-utility easement by separate instrument to cover the relocated sewer line. The easement with original signatures must be provided to Planning prior to the case going to City Council for final approval and subsequent recording at the Register of Deeds.
- (4) Changing the platted right-in right-out access to full movement from Lot 1, North Ridge Village Addition onto Ridge Road is contingent upon approval by the Traffic Engineer.
- (5) Vacate the platted 20-foot wide utility easement that runs parallel to the north lot line of Lot 1, North Ridge Village Addition.
- (6) Vacate the platted access easement per the approval of the Traffic Engineer.
- (7) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide franchised utilities with any needed plans for review for relocation of utilities. Provide a guarantee or approved plans for the relocation of any utilities. This must be provided to Planning prior going to City Council for final action
- (8) All improvements shall be according to City Standards and at the owner's/applicant's expense.
- (9) Apply for an adjustment to CUP DP-280 that reflects the changes (but not limited to) in the size and configuration to Lots 1 (Parcel 1) & 2 (Parcel 2), North Ridge Village Addition.
- (10) Provide Planning with a legal description of the vacated utility easement, the utility easement dedicated by separate instrument, platted access control, and the access 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.

- (11) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate platted 60-foot wide access easement that was located along the common north-south lot line of Lots 1 & 2, North Ridge Village Addition.
- (2) Vacate the 20-foot wide utility easement dedicated by separate instrument (DOC# FLM/PG 29114441) located within the east 20 feet of (a) of Lot 1, North Ridge Village Addition, contingent on the approval (by Public Works/Water & Sewer) of a PPS for the abandonment and relocation of the existing sewer line. All improvements will be per City standards and at the applicant's expense. The approved PPS# must be provided to Planning prior to the case going to City Council for final approval.
- (3) Dedicate a sewer-utility easement by separate instrument to cover the relocated sewer line. The easement with original signatures must be provided to Planning prior to the case going to City Council for final approval and subsequent recording at the Register of Deeds.
- (4) Changing the platted right-in right-out access to full movement from Lot 1, North Ridge Village Addition onto Ridge Road is contingent upon approval by the Traffic Engineer.
- (5) Vacate the platted 20-foot wide utility easement that runs parallel to the north lot line of Lot 1, North Ridge Village Addition.
- (6) Vacate the platted access easement per the approval of the Traffic Engineer.
- (7) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide franchised utilities with any needed plans for review for relocation of utilities. Provide a guarantee or approved plans for the relocation of any utilities. This must be provided to Planning prior going to City Council for final action
- (8) All improvements shall be according to City Standards and at the owner's/applicant's expense.

- (9) Apply for an adjustment to CUP DP-280 that reflects the changes (but not limited to) in the size and configuration to Lots 1 (Parcel 1) & 2 (Parcel 2), North Ridge Village Addition.
- (10) Provide Planning with a legal description of the vacated utility easement, the utility easement dedicated by separate instrument, platted access control, and the access 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.
- (11) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

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**PUBLIC HEARINGS**

4. **Case No.: CON2014-00004 (deferred from 3-6-14)** – Gibson Wholesale Co., Inc., c/o Scott Riffel (owner/applicant) request aCity request to amend CON2012-33 (nightclub in the City) to remove restrictions on days when alcohol is served, remove restrictions on hours of operation and remove affiliation with a fraternal order on LC Limited Commercial zoned property on property described as:

Lot 1, Dotzour’s Addition to Wichita, Sedgwick County, Kansas.

AND

The South 3 feet of the following described tract:  
Beginning 637.5 feet East and 330 feet North of the Southwest corner of the Southeast Quarter of Section 13, Township 27, Range 1 West of the 6<sup>th</sup> P.M. Sedgwick County, Kansas; thence West 82.5 feet; thence North 330 feet; thence East 82.5 feet; thence South 330 feet to the beginning.

**BACKGROUND:** The applicant is requesting consideration for an amendment to Conditional Use CON2012-00033, a “nightclub in the city.” The proposed amendment changes conditions C and D: removes restrictions on days when alcohol is served; removes restrictions on hours of operation, and; removes affiliation with a fraternal order (see attached MAPC Resolution and the referenced Activities). Conditions A, B, E, F, and G are proposed to remain in effect. The proposed amendment does not change the facility’s zoning classification as a night club in the city. The 1.48-acre LC Limited Commercial zoned platted lot and its 11,597-square foot vacant facility is located on the northeast corner of Mt. Carmel and Central Avenues.

The applicant proposes that the 11,597-square foot vacant facility will not be open to the public, but will be rented out any day of the week for events such as weddings, receptions, graduation parties, dances and similar activities. The consumption and serving of alcohol and/or cereal malt beverages (drinking) is an option for these events, as is dining. Live music or music provided by a DJ is an option for these events. The applicant's proposed hours of operation are 9 am- midnight Thursday-Sunday and 9 am-2 am Friday and Saturday. A nightclub in the city is required to stop serving and selling alcohol and/or cereal malt beverages at 2 AM. A night club in the city is required to close at 2 am. Unlike CON2012-00033, there will be no affiliation with a fraternal order or a private club.

The vacant facility is part of an LC zoned retail strip that includes a pharmacy. Properties abutting and adjacent to the north side of the site is developed as SF-5 Single-Family Residential zoned single family residences and a TF-3 Two-Family Residential zoned duplex. There is a paved alley located along the north side of the site, which intersects with Mt. Carmel. There are also SF-5 zoned single family residences located west of the site, across Mt. Carmel Avenue. Properties located south, east and west of the site, with Central Avenue frontage, are zoned LC and are developed as retail, offices, restaurants, a liquor store, some vacant commercial spots, a convenience store, a donut shop and a 2,080-square foot drinking establishment – tavern (the Cowboy Inn, located southeast of the St Paul and Central Avenues intersection).

The applicant has provided a parking agreement with the abutting east property and has provided the following breakdown on available parking and the corresponding occupancy:

- Minimum parking available seven days per week= 134 spaces. This includes the 28 off-site spaces and the parking around the 'Moose', but does not include the parking in front of Barney's. This parking permits 268 occupants when alcohol is served (1 space per two occupants/night club in the City parking standards\*) and 402 occupants when alcohol is not served (1 space per three occupants/dance hall parking standards\*). NOTE: The 134 available parking spaces and its corresponding 402 occupants are the lowest number of available parking spaces and occupants.
- Parking available after 7 pm, Monday-Friday = 188 spaces. This includes the parking around the 'Moose', Barney's and the 40 off-site parking spaces. This parking permits 376 occupants when alcohol is served\* and 564 occupants when alcohol is not served\*. NOTE: The 188 available parking spaces and its corresponding 564 occupants are the highest number of available parking spaces and occupants.
- Parking available before 6 pm Saturday = 146 spaces. This does not include the parking in front of Barney's. This parking permits 292 occupants when alcohol is served\* and 438 occupants when alcohol is not served.\*
- Parking available after 6 pm on Saturday = 188 spaces. This includes the parking around the 'Moose', Barney's and the 40 off-site parking spaces. This parking permits 376 occupants when alcohol is served\* and 564 occupants when alcohol is not served\*.
- Parking available on Sunday = 188 spaces. This includes the parking around the 'Moose', Barney's and the 40 off-site parking spaces. This parking permits 376 occupants when alcohol is served\* and 564 occupants when alcohol is not served\*.

**CASE HISTORY:** The site is part of Lot 1, Detzour's Addition, which was recorded with the Sedgwick County Register of Deeds August 27, 1957. CON2012-0033, a Conditional Use for a

Nightclub in the City was approved by the MAPC, at their August 16, 2012 meeting. There were no protests, therefore the MAPC action was final. BZA2012-00072 was an Administrative Adjustment that reduced parking by 25 per-cent; NOTE: The additional 40-28 off-site parking spaces agreement were not available at the time of the parking adjustment. CON2012-00051 was an Administrative Adjustment that allowed drinking, dining and dancing for Moose members and guest on New Year's Eve. Staff had received calls seeking information or expressing concern about the request.

DAB VI considered CON2014-00004 at their March 3, 2014. DAB VI unanimously recommended denial, with concern about the site's parking. There was no one present at the DAB VI meeting that protested the request. At the MAPC's March 6, 2014, meeting the applicant requested a month deferral, which the MAPC granted. The applicant is going to the April 7, 2014, DAB VI meeting with additional information.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5, TF-3	Single-family residences, duplex
SOUTH:	LC	Donut shop, restaurant, office-ware-house, office, retail, drinking establishment
EAST:	LC	Restaurant, retail, liquor store, convenience store
WEST:	SF-5, LC	Single-family residences, office ware-house

**PUBLIC SERVICES:** The site has access onto Central and Mt. Carmel Avenues. Central Avenue is a four-lane major arterial street, with center turn lanes at this location. Mt. Carmel is a paved and curbed local residential street. There is a paved alley located along the north side of the site, which intersects with Mt. Carmel. All utilities are available to the site. The classification of roads, access and utilities have not changed since CON2012-00033 was approved

**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 in the city when located within 300 feet of "Church or a Place of Worship," public "Park," "School," or residential zoning. There have been no changes in the zoning or development around the site that would change the need for the site to have a Conditional Use for a nightclub in the city. The proposed amendment does not change the facility's zoning classification as a night club in the city.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed night club is located within an existing commercial development, with direct access onto Central Avenue a four-lane major arterial street, with center turn lanes at this location. There is a 20-foot paved alley between the site and the north abutting properties which offers minimal buffering. CON2012-00033 required six foot tall solid screening between the site and the north abutting properties as well as four foot tall solid screening along the west side of the site's parking lot

Any night club or drinking establishment has the potential to become a nuance to its neighborhood. The applicant's proposed amendment will not open the 11,597-square foot facility to the general public, but would allow it to be rented out for public or private activities that are not repeated on a weekly basis, and that are not open to the public on a daily basis at times other than when an event is schedule. The proposed amendment is somewhat less restrictive than CON2012-00033 in the days of operation and definitely less restrictive in its hours of operation. It will no longer be affiliated with a fraternal order, but will not become a private club. A key consideration is who will be using the 11,597-square foot facility. If the facility was open to the general public as a night club in the city it would be out of character with the development pattern along this Central Avenue and become more likely to become a nuance or worse to the neighborhood. The area's only establishment that provides the sale, consumption and serving of alcohol and/or cereal malt beverages, is the 2,080-sqaure foot Cowboy Inn, which is dwarfed by the applicant's 11,597-square foot facility.

Enforcement of the proposed conditions may fall outside the hours and days of the City's Code Enforcement division, which leaves the Police Department as the group that may get the call for enforcement. The Police Department does not operate under the same codes as Code Enforcement. The applicant is concerned on how to find a business that can successfully occupy this 11,597-square foot vacant facility (prior to CON2012-00033 it was a failed grocery store), which in turn could help maintain the area's commercial property. The location of this LC zoned property along Central Avenue, a major arterial allows good visibility and access beyond the immediate neighborhood.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for an amendment to CON2012-00033, a nightclub in the city be APPROVED, subject to the following conditions:

- A. The site shall be in conformance with the approved site plan, which includes the parking – occupancy breakdown. Occupancy as determined by the Fire Marshall cannot increase the maximum number of occupants, but it may lower the maximum number of occupants.
- B. No outdoor entertainment, recreation, loud speakers, music, dancing, cooking, food or drink services are permitted on the site.
- C. The facility shall be rented out for public or private activities such as weddings, receptions, graduation parties, dances and similar activities that are not repeated on a weekly basis and that are not open to the public on a daily basis at times other than when an event is schedule. The exception is a weekly dance class.
- D. The consumption and serving of alcohol and/or cereal malt beverages (drinking) is an option for these events, as is dining. No consumption and serving of alcohol and/or cereal malt beverages during the weekly dance class. Live music or music provided by a DJ is an option for these events. The site shall not obtain a Drinking Establishment (DE) or Drinking Establishment Restaurant (DER) license. Alcohol may only be served on the site through a licensed caterer
- E. The facility will not be affiliated with any fraternal association or private club.
- F. The applicants shall comply with all applicable development standards of the UZC, including but not limited to parking, screening, and landscaping.
- G. The applicant shall obtain, maintain, and comply with all applicable permits and licenses necessary for the operation of a night club in the city.
- H. 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 proposed use shares LC zoned property with a pharmacy. Properties abutting and adjacent to the north side of the site are developed as SF-5 zoned single family residences and a TF-3 zoned duplex. There is a paved alley located along the north side of the site, which intersect with Mt. Carmel. There are also SF-5 zoned single-family residences located west of the site, across Mt. Carmel Avenue. Properties located south, east and west of the site, with Central Avenue frontage, are zoned LC and are developed as retails, offices, restaurants, a liquor store, some vacant commercial spots, a convenience store, a donut shop and a drinking establishment – tavern, the 2,080-square foot Cowboy Inn.
  
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC which allows a wide variety of retail, office and residential uses. The site could be used as zoned and developed or redeveloped as currently zoned. CON2012-00033 was for a night club in the city that restricted the use of the facility to three groups, the Moose, bingo and dance lessons. It also restricted the days and hours of operation, to where all activities were slotting between 6 p.m. and 11 p.m. A concern is how to find a business that can successfully occupy this 11,597-square foot vacant facility, which in turn could help maintain the area’s commercial property.
  
2. Extent to which removal of the restrictions will detrimentally affect nearby property: There is the potential for any nightclub or a drinking establishment, becoming a nuance or worse to a neighborhood. The applicant’s proposal to rent out the facility only for public or private activities such as weddings, receptions, graduation parties, dances and similar activities, that are not repeated on a weekly basis, and that are not open to the public on a daily basis at times other than when an event is schedule may reduce the possibility of the facility becoming a nuance or worse to a neighborhood. If the 11,597-square foot facility was open to the general public as a night club in the city it would be out of character with the development pattern along this Central Avenue and become more likely to become a nuance or worse to the neighborhood.  
  
Even so, enforcement of these restrictions may fall outside the hours and days of the City’s Code Enforcement division, which leaves the Police Department as the group that may get the call for enforcement. The Police Department does not operate under the same codes as Code Enforcement.
  
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 in the city when located within 300 feet of “Church or a Place of Worship,” public “Park,” “School,” or residential zoning. Since CON2012-00033 was approved there have been no changes in the zoning or development around the site that would change the need for the site

to have a Conditional Use for a nightclub in the city. The proposed amendment does not change the facility's zoning classification as a nightclub in the city.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed night club is located within an existing commercial development, with direct access onto Central Avenue a four-lane major arterial street, with center turn lanes at this location. There is a 20-foot paved alley between the site and the north abutting properties which offers minimal buffering. CON2012-00033 required six foot tall solid screening between the site and the north abutting properties as well as four foot tall solid screening along the west side of the site's parking lot

Any night club or drinking establishment has the potential to become a nuance to its neighborhood. The applicant's proposed amendment will not open the 11,597-square foot facility to the general public, but allow it to be rented out for public or private activities that are not repeated on a weekly basis, and that are not open to the public on a daily basis at times other than when an event is schedule. The proposed amendment is somewhat less restrictive than CON2012-00033 in the days of operation and definitely less restrictive in its hours of operation. It will no longer be affiliated with a fraternal order, but will not become a private club. A key consideration is who will be using the facility. If the 11,597-square foot facility was open to the general public as a night club in the city it would be out of character with the development pattern along this Central Avenue and become more likely to become a nuance or worse to the neighborhood. The area's only establishment that provides the sale, consumption and serving of alcohol and/or cereal malt beverages, is the 2,080-sqaure foot Cowboy Inn, which is dwarfed by the applicant's 11,597-square foot facility.

5. Impact of the proposed development on community facilities: Possibly the need for more police service.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**DENNIS** said he was concerned when the Moose wanted to use this location next to a neighborhood over a year ago; however, he felt their use was benign and they did close at 9:00 p.m. He said he would not vote for this today. He commented that the Conditional Use goes with the property, not the owner/operator. He said although Staff recommended approval of the application, they will have to convince him.

**LONGNECKER** commented that although DAB VI recommended denial of the application at the 3-3-14 meeting due to concerns about parking, since that time, the applicant has provided a site plan and secured an off-site parking agreement for between 28-40 spaces. He said when the application was returned to DAB VI on 4-7-14, they voted to recommend approval 6-0. He said although staff has received several phone calls voicing concerns about the application, staff has not received any protests and there was no neighborhood representation at either DAB meeting. He said he understands the applicant has a fairly good relationship with the neighbors; however, as Commissioner Dennis mentioned, the Conditional Use approval goes with the property.

**FOSTER** clarified that there was no consumption of alcohol during dance classes. He also suggested revised wording of that restriction in the Staff Report.

**LONGNECKER** agreed that the restriction could be reworded.

**TIM AUSTIN, POE & ASSOCIATES, AGENT FOR THE APPLICANT** said the application is a fairly benign use because the activities will basically remain the same. He said the applicant owns Barneys next door to the location, so he has a significant investment in the area. He said the applicant is well known in the neighborhood and has answered a lot of questions about what he proposes.

**DENNIS** said he may reluctantly support the request.

**FOSTER** commented that the screening on the west side looks good. He asked for clarification about access in and out of the venue and a possible restriction on delivery times with reference to neighbors north of the alley.

**AUSTIN** said the alley is a dead end and dedicated to Barney's deliveries.

**SCOTT RIFFEL, 12219 HUNTERSVIEW, WICHITA, KANSAS, APPLICANT** clarified that there is no access to the alley and that it is a dead end. He said the dock is serviced from the parking lot. He said any deliveries will be through the front door or at the dock.

**LONGNECKER** referred to the second paragraph of page 2 of the Staff Report and suggested that the proposed hours of operation be included as part of conditions of the Conditional Use approval.

**MOTION:** To approve subject to staff recommendation, including hours of operation.

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

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5. **Case No.: ZON2014-00002** - Drew Loyd (owner) request a City zone change request from SF-5 Single-family Residential to LC Limited Commercial on property described as:

Lots 3 and 4, Block 2, Eureka Gardens Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant requests LC Limited Commercial (LC) zoning on two platted lots, one of which is developed with a single-family residence. The .5-acre site is currently zoned SF-5 Single-Family Residential (SF-5). Under LC zoning, the Unified Zoning Code (UZC) would permit the following land uses on this site by right (which are not permitted under the current SF-5 zoning): duplex, multi-family, assisted living, group residence, correctional placement residence, hospital, nursing facility, university or college, animal care, automated teller machine, bank or financial institution, broadcast/recording studio, construction sales and services, convenience store, farmers market, funeral home, hotel or motel, medical service, nurseries or garden centers, general office, commercial parking area, pawnshop, personal care service, personal improvement service, post office substation, limited printing and copying, indoor entertainment and recreation, restaurant, general retail, secondhand store, service station, limited vehicle repair, vocational school, agricultural research, agricultural sales and service. Under LC zoning, the UZC would require compatibility setbacks from SF-5 zoning, parking, screening and landscaping; these requirements will limit development on the site.

The UZC requires a 25-foot compatibility setback from SF-5 zoning to the south and east, it limits building height to 35 feet within 50 feet of SF-5 zoning, it limits light pole height to 15 feet within 200 feet of residential zoning, and it requires three parking spaces per 1,000 square feet for most commercial uses.

This block of South Illinois Street has transitioned from residential to primarily commercial zoning over time. The entire west side of this block is zoned GC General Commercial (GC) and developed with banking, retail, vehicle repair and restaurant uses that front West Street. Other than the application area, only one other residence exists in SF-5 zoning on the east side of this block, three residences exist in LC zoning on the east side of the block. Property to the north of the site is zoned LC and developed with an office/warehouse. Property immediately south of the site is zoned SF-5 and developed with a single-family residence; further south is an LC zoned vehicle repair business and hotel/restaurant uses fronting the Kellogg expressway. East of the site are SF-5 and TF-3 Two-family Residential (TF-3) zoned single-family residences and duplexes.

**CASE HISTORY:** The site was platted as two lots within the Eureka Gardens Addition in 1941.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC	Office/warehouse, single-family residence
SOUTH:	SF-5, LC	Single-family residence, vehicle repair, hotel, restaurant
EAST:	SF-5, TF-3	Single and two-family residences
WEST:	GC	Banking, retail, vehicle repair, restaurant

**PUBLIC SERVICES:** South Illinois Street is a paved local street, West Street located one block to the west is an arterial, and West Taft Avenue to the north is classified as a collector. All other public utilities are available.

**CONFORMANCE TO PLANS/POLICIES:** The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan identifies the site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types, including multi-family units, typically found in large urban municipality. The *Land Use Guide* identifies all property immediately west of the site, and property south of the site fronting Kellogg as “regional commercial.” The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials, should locate in compact clusters or nodes versus extended strip developments, should not put commercially generated traffic on residential streets, and should have site design features which limit noise, lighting and other activity from adversely impacting surrounding residential areas.

**RECOMMENDATION:** Staff anticipates that this entire block will eventually rezone to LC. Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED.**

This recommendation is based on the following findings:

- 1) **The zoning, uses and character of the neighborhood:** This block of South Illinois Street has transitioned from residential to primarily commercial zoning over time. The entire west side of this block is zoned GC and developed with banking, retail, vehicle repair and restaurant uses

that front West Street. Other than the application area, only one other residence exists in SF-5 zoning on the east side of this block, three residences exist in LC zoning on the east side of the block. Property to the north of the site is zoned LC and developed with an office/warehouse. Property immediately south of the site is zoned SF-5 and developed with a single-family residence; further south is an LC zoned vehicle repair business and hotel/restaurant uses fronting the Kellogg expressway. East of the site are SF-5 and TF-3 zoned single-family residences and duplexes.

- 2) **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned SF-5 and could be developed with single-family residences. The commercial transition in this area may not make it desirable for future single-family residential development.
- 3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Residential neighbors to the south and east could be impacted with increased noise, light, trash, traffic and activity from development under LC zoning. These impacts would not be new to the area as significant commercial zoning and development already exists in the immediate area. The compatibility standards of the UZC should mitigate these impacts on nearby residences.
- 4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan identifies the site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types, including multi-family units, typically found in large urban municipality. The *Land Use Guide* identifies all property immediately west of the site, and property south of the site fronting Kellogg as “regional commercial.” The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials, should locate in compact clusters or nodes versus extended strip developments, should not put commercially generated traffic on residential streets, 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:** All services are in place, any increased demand on community facilities can be handled by existing infrastructure.

JESS MCNEELY, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

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

6. **Case No.: ZON2014-0003 and CON2014-00011** - William G. and Laurie J. Stone and Sandlian Iron & Metal / Ferris Consulting (Greg Ferris) (agent) request a City zone change request from LC Limited Commercial and SF-5 Single-family Residential to LI Limited Industrial and Conditional Use request to permit wrecking/salvage on property described as:

A tract of land Beginning 545 feet West and 426 feet North of the Southeast corner of the Southeast Quarter; thence North 180 feet; thence West 85 feet; thence North 250 feet; thence West 195 feet; thence South 430 feet; thence East 280 feet to the point of beginning, Section 34, Township 26, Range 1 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas.

AND

A tract of land Beginning 545 feet West and 606 feet North of the Southeast corner of the Southeast Quarter; thence North 250 feet; thence West 85 feet; thence South 250 feet; thence East 85 feet to the point of beginning, Section 34, Township 26, Range 1 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas.

AND

A tract of land Beginning 425 feet North of the Southeast corner of the Southeast Quarter; thence North 180 feet; thence West 545 feet; thence South 180 feet; thence East 545 feet to the point of beginning, Section 34, Township 26, Range 1 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas.

AND

A tract of land Beginning 825 FT West and 426 feet North of the Southeast corner of the Southeast Quarter; thence North 430 feet; thence West 320 feet; thence South 430.83 feet; thence East 320 feet to the point of beginning, Section 34, Township 26, Range 1 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas.

**BACKGROUND:** The applicant is requesting LI Limited Industrial (LI) zoning and a Conditional Use to permit “wrecking and salvage” on 8.1 unplatted acres located approximately 500 feet north of West 29<sup>th</sup> Street North, east of North Ridge Road. A portion of the application area (2.25 acres) is currently zoned LC Limited Commercial (LC); the remainder of the site (5.85 acres) is zoned SF-5 Single-family Residential (SF-5). A portion of the application area currently is currently developed with a non-conforming wrecking and salvage yard. February 9, 1968, and March 30, 1974, aerial photographs show that a wrecking and salvage operation was in operation at those times. The salvage yard existed prior to the adoption of county-wide zoning. Once county-wide zoning was adopted, the wrecking and salvage operation became non-conforming but was allowed by code to continue to operate as a nonconforming use within the area that it occupied at the time county-wide zoning was adopted. Per the Unified Zoning Code, outdoor nonconforming uses such as vehicle wrecking and salvage yards do not have any expansion rights. The business is prohibited by code from expanding to a larger area unless it is properly zoned.

As shown on the applicant’s site plan, the business has existing buildings located within approximately 60 feet of Hoover Road, a designated two-lane arterial street. (The Supplementary Use Regulations prohibit wrecking and salvage operations abutting an arterial street. The Zoning Administrator has issued an opinion that wrecking and salvage operations located beyond 150 feet of an arterial street are not “abutting.”) Wrecked vehicles are located just west of the existing office building shown on the site plan. The site is partially enclosed by a solid metal fence. Solid fencing is located along: the southern property line; the western 600 feet of the northern property line (not on the site); the northern 220-foot long portion of the east property line and along the southern 72-foot portion of the east property line. A chain-link fence with plastic slats is located along the easternmost 515 feet of the site’s northern property line. (Chain-link fencing with plastic slats is a non-conforming fence type not permitted for screening. The slats do not provide effective solid screening.) The applicant’s site plan depicts a new eight-foot solid fence will be installed along the western boundary. Parking is located in front of the existing office.

Properties surrounding the application area are zoned SF-5, SF-20 Single-family Residential (SF-20) and LC. The SF-20 zoned land located to the east of Hoover Road is in Sedgwick County, and has been approved for PUD-35, which once perfected, would allow a wide range of uses: airstrip, residential, office and commercial. Mining is permitted on the land to the east of Hoover with the submission of a preliminary plat. A preliminary plat has been submitted. Land to the north of the application area appears to be developed with a non-conforming wrecking and salvage yard. There is a single-family residence, with frontage along Hoover that is located immediately north of the application areas existing office, and east of the northern half of the eastern end of the application area. The property located to the west is located in Sedgwick County, and is a completed sandpit that is now a private lake. Property located south of the application is developed with some single-family residences. One of the lots does not have a site built residence, but has a single recreational vehicle.

As noted above, outdoor nonconforming uses such as vehicle wrecking and salvage yards do not have any expansion rights. The existing business could continue to operate on the portion of its ownership that it has been using for wrecking and salvage, but it is prohibited from expanding to a larger area due to its nonconforming land use status. The UZC permits a “wrecking and salvage yard” in the LI and GI General Industrial (GI) districts, subject to Supplementary Use Regulations Section III-D.6.e and dd. “Wrecking and salvage yard” in the LI and GI districts may be approved as a “conditional use” provided that such operation: 1) is not abutting an arterial street, expressway or freeway; 2) in the opinion of the Planning Commission, will not adversely affect the character of the neighborhood; and 3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence. The outdoor storage and/or bailing of junk, scrap, paper, bottles, rags or similar materials are prohibited.

Wrecking and salvage requires one parking space per 333 square feet of office or retail sales area, plus one space per 2,000 square feet of building floor area used for warehousing of salvaged parts; plus one per 43,500 square feet of outdoor storage area. The site should provide approximately 11 paved (concrete, asphaltic concrete, asphalt or other comparable surface) parking spaces (two for the approximately 800-plus square-foot office, one space for the warehouse and eight for the outside storage area).

The applicant will have to remove existing wrecked vehicles located within 150 feet of Hoover or request a waiver from the City Council. The chain-link fence will need to be replaced with code compliant screening.

**CASE HISTORY:** The property’s LC zoning was established in 1958 as part of an area-wide extraterritorial zoning action. The SF-5 zoning was established in 2000 when the property was annexed by the City of Wichita.

**ADJACENT ZONING AND LAND USE:**

North: SF-5; single-family residences, non-conforming salvage and wrecking yard

South: LC and SF-5; single-family residences, an RV

East: LC and SF-20; private airport, approved for PUD-35 that permits a variety of uses, mining, airstrip, office, residential and commercial subject to platting

West: SF-20; private lake

**PUBLIC SERVICES:** The segment of North Hoover Road that fronts the application area has approximately 30 feet of half-street frontage. It does not appear that the site is served by public sewer or water services.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” depicts the site as being 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.

**RECOMMENDATION:** Based upon the information available at the time this report was prepared, it is recommended that the request be approved subject to platting within one year and the following conditions

1. The Conditional Use permits a vehicle wrecking/salvage yard.
2. The site shall be developed, operated and maintained in compliance with UZC, Art III, Sec. III-D.6.e; the conditions of approval contained in the Conditional Use and all other applicable codes, regulations or licenses, including, but not limited to the Unified Zoning Code, fire, health and environmental regulations.
3. Within six months of final approval, code required screening shall be installed (Sec. IV-B.3.h) and shall be maintained. At the time of approval, screening along the west property line and the easternmost 515 feet of the site’s northern property line was either missing or not in compliance.
4. If not present at the time of final approval, the applicant shall provide at least 11 paved parking spaces within six months of final approval.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.
6. If necessary, a revised site plan addressing the conditions of approval shall be submitted for Planning Director’s consideration within 60 days of final approval.
7. Storage of all of vehicles shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding. Inoperable vehicles or any other materials associated with the wrecking and salvage activities shall not be stacked, stored or piled higher than the screening required to hide the vehicles or material from ground level view.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.

10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. 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: Properties surrounding the application area are zoned SF-5, SF-20 Single-family Residential (SF-20) and LC. The SF-20 zoned land located to the east of Hoover Road, is in Sedgwick County, and has been approved for PUD-35, which once perfected, would allow a wide range of uses: airstrip, residential, office and commercial. Mining is permitted on the land to the east of Hoover with the submission of a preliminary plat. A preliminary plat has been submitted. Land to the north of the application area appears to be developed with a non-conforming wrecking and salvage yard. There is a single-family residence, with frontage along Hoover that is located immediately north of the application areas existing office, and east of the northern half of the eastern end of the application area. The property located to the west is located in Sedgwick County, and is a completed sandpit that is now a private lake. Property located south of the application is developed with some single-family residences and an RV.
2. The suitability of the subject property for the uses to which it has been restricted: The property is developed and operating as a nonconforming vehicle wrecking and salvage yard. The site could continue to operate within its present area; however, the applicant has a much larger ownership and could process a larger volume of vehicles if he request were to be approved.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The subject site has been used as a wrecking and salvage yard since 1968, and could continue to operate within the bounds of the code's nonconforming perimeters. Approval of the request will add reasonable site specific development standards to the site and use, which should reduce impacts on adjoining property owners.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Wrecking and salvage operations perform a needed service in responsibly disposing of inoperable vehicles. Denial would confine the applicant to operations consistent with its nonconforming situation and prevent the use from growing, which would presumably represent a loss of economic opportunity.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” depicts the site as being appropriate for “urban residential” uses. The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The request does not conform to the designation found on the land use guide.
6. Impact of the proposed development on community facilities: Approval of the request should not impact community facilities to any greater extent than the existing nonconforming use.

**DALE MILLER**, Planning Staff presented the Staff Report.

**GREG FERRIS, AGENT FOR THE APPLICANT, 144 S. BAY COUNTRY COURT, WICHITA, KANSAS** referenced the additional salvage operation to the north of the proposed site which he indicated was annexed into the City as a non-conforming use similar to the application area. He said this is not a new use introduced into the area that is not already there. He said the applicant will provide 8-foot solid screen fencing and that the area will be well screened and maintained. He said the applicant also has no problem moving operations so they are at least 150-feet from the arterial. He said this wrecking and salvage operation already exists and they would like to expand the operation to the west and north. He mentioned that the north driveway serves the property to the north and that the drive may be located on part of the applicant’s property. He said they will not be introducing anything that is anything different, but the requested conditional use will be bring the property into conformance with regulations regarding drainage, rodent control and all the other conditions listed in the Staff Report. He said if the application is not approved, the property will continue to operate as a non-conforming use. He referred to the site plan, additional parking and indicated that the applicant had no problem with any of the recommendations listed in the Staff Report.

**DENNIS** asked legal for clarification of “legal non-conforming use.” He asked does that mean they don’t have to conform with any of the established regulations.

**JEFF VANZANDT, ASSISTANT CITY ATTORNEY** said if the operation existed prior to annexation of the property, the operator can continue that use as originally established subject to current City laws, rules and ordinances.

**DAVID CORNWELL, 5618 W. 29<sup>TH</sup> STREET NORTH, WICHITA, KANSAS** provided a handout which consisted of pictures taken of the wrecking/salvage operation and County records of various zoning and code enforcements issues. He said the applicant has put up a pretty fence; however, the fence is located on 27 feet of his property. He said he will get his property resurveyed and get his land back. He said this proposed salvage operation/expansion is going to be located right next to a lake which is also in front of his property. He said there are million dollar homes in the area within 500 feet

of the site as well as three lakes. He said he doesn't understand why the Commission is even considering this application.

**DENNIS** asked legal for clarification on rezoning 27 feet of property that is not owned by the applicant.

**FOSTER** commented that issue may be resolved by the platting requirement.

**MILLER** said staff was working with the legal description on the ownership list certified by the title company. He said before the item goes to the City Council, legal staff will confirm the legal description.

**J. JOHNSON** asked where the million dollar homes were located.

**MILLER** said the Barefoot Bay Addition was across the street just south of the drive.

**JOLYNN OAKMAN, 5620 W. 29<sup>TH</sup> STREET NORTH, WICHITA, KANSAS** said she lives directly across the street from the site on west 29<sup>th</sup> Street. She said she finds it interesting that there are no pictures of the Ridgeport Addition directly to the west of the lake adjacent to the proposed zoning area which is being developed with all residential uses. She said this site will have very limited use since it is less than three acres. She said she sees no advantage or benefit to increasing the size of the property and asked the Commission to vote against the rezoning and conditional use.

**FERRIS** commented that the Planning Commission does not get involved in private ownership matters because they are not zoning issues. He said if Mr. Cornwell is correct that the fence is located on his property, it will be moved. He said the applicant has recently acquired the property within the last 6-9 months, so they do not feel that what happened in the past at the property is relevant to this application. He reiterated that there is significant wrecking and salvage going on in the area. He said they will screen the area from Ridgeport, it will be platted and they will add an additional piece of property to the salvage operation. He said right now, the area is not even screened from the lake. He said they believe the upgrade and introduction of additional conditions will be a positive in the area. He concluded by stating that the operation that is there now is not going away.

**NEUGENT** asked if all salvage operations in the area were legal non-conforming.

**MILLER** replied as far as staff can determine.

**MCKAY** requested further clarification of legal non-conforming use.

**RAMSEY** commented that he lives in Bridgeport, which is off of 29<sup>th</sup> Street North and when he drives by he is vaguely aware that there is a salvage operation in the area but you don't see it and he has never noticed it.

**MOTION:** To approve subject to staff recommendation.

**DENNIS** moved, **B. JOHNSON** seconded the motion, and it carried (8-1). **NEUGENT**  
– No.

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7. **Case No.: CON2014-00012** – R & M Real Estate, LLC, c/o Jay Russell (owner)/Baughman Company, PA, c/o Russ Ewy (agent) request a City Conditional Use request to permit sand extraction on SF-5 Single-family Residential zoned property on property described as:

The South Half of the Southeast Quarter of Section 22, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas EXCEPT the East 311.00 feet of the South 516.83 feet thereof, TOGETHER with Government Lot 5 in the Northeast Quarter of Section 27, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT the East 311.00 feet thereof, EXCEPT that part platted as Edge Water Addition, Wichita, Sedgwick County, Kansas, and EXCEPT that part of said Government Lot 5 and said Southeast Quarter of Section 22, more particularly described as: Commencing at the southeast corner of said Government Lot 5; thence on an assumed bearing of S89°06'08"W along the south line of said Government Lot 5, 311.00 feet; thence N00°41'04"W parallel with the east line of said Government Lot 5, 60.00 feet to the southwest corner of Lot 3, Block A, Rennick Commercial Addition, Wichita, Sedgwick County, Kansas, said corner also being a point on the north right of way line of 45th St. N. as established on the plat of said Rennick Commercial Addition and as established on the plat of Edge Water Addition, Wichita, Sedgwick County, Kansas; thence S89°06'08"W, along the north right of way line of said 45th St. N. as established on said plat of Edge Water Addition, 840.00 feet for a point of beginning; thence continuing S89°06'08"W, along said north right of way line of 45th St. N., 160.28 feet to a deflection point in said line; thence S89°25'51"W along the north right of way line of said 45th St. N., 296.89 feet; thence N00°34'09"W, 230.59 feet, more or less, to a point on the north line of said Government Lot 5, also being a point on the south line of said Southeast Quarter of Section 22; thence continuing N00°34'09"W, 454.31 feet; thence N44°25'51"E, 141.42 feet; thence N89°25'51"E, 257.17 feet; thence S45°34'09"E, 141.42 feet; thence S00°34'09"E, 452.97 feet, more or less, to a point on the south line of said Southeast Quarter of Section 22, also being a point on the north line of said Government Lot 5; thence continuing S00°34'09"E, 231.01 feet to the point of beginning, all being subject to road rights of way of record; TOGETHER with the east 511.26 feet of the North Half of the Southeast Quarter of Section 22, Township 26 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas; TOGETHER with the west 709.35 feet of the east 1220.61 feet of the North Half of the Southeast Quarter of Section 22, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; TOGETHER with the west 705.83 feet of the east 1926.44 feet of the North Half of the Southeast Quarter of Section 22, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; TOGETHER with the North Half of the Southeast Quarter of Section 22, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, except the east 1926.44 feet thereof, subject to road rights-of-way of record.

**BACKGROUND:** The applicant is requesting a Conditional Use to allow "Mining or Quarrying", specifically the extraction and removal of sand from the approximately 160-acre, SF-5 Single-Family Residential zoned, unplatted tract. The Unified Zoning Code (UZC), allows consideration of mining or quarrying as a Conditional Use in the SF-5 zoning district; UZC, Sec.III-D.6.gg. If approved, the Conditional Use would permit the excavation and removal of sand from the site.

The applicant's site plan shows a Phase 1 and Phase 2 pumping areas, as well as the plant location off of Hoover Road. The applicant has provided the following operational details:

- Daily Hours of Operation: Open to public and contractors – 7:00 am to 5:00 pm. Internal operations/pumping – 6:00 am to sunset (per code). The site will be open seven days a week.
- Operations will be staggered into two phases, with both phases operating for a maximum of 8 years each, for a total of 16 years, from the date operations commence. NOTE: It may be two years before they start pumping and it may be two months before they strip topsoil.
- The recycling area, as shown on the site plan, will be for stockpiling clean fill material to be used as needed.
- Aggregate stock piles will be located near the plant site along Hoover Road.
- The plant site will occupy a 400-foot by 400-foot area (roughly 3.7-acres) on the north side of the existing hedge (currently running east-west, located midway on the subject property) with access onto Hoover Road (a paved to a two-lane arterial). All fuel storage and equipment storage will be within this area.
- The applicant has stated that the proposed sand extraction could generate between 80 and 160 trucks per day.

The applicant's site plan shows single-family residential development around the sand pit lake after the conclusion of the extraction operation.

The SF-5 zoned site is located approximately one-mile west of the Arkansas River in a City-County area that is a mix of agricultural land, single-family residences, active sand extraction operations, single-family residential development built around sand pit lakes and inactive sand pit lakes. Properties located north and northwest of the site are SF-20 Single-family Residential zoned agricultural lands, single-family residences and a small sand pit lake with a single-family residences built around it (CON2000-00013; sand extraction). Approximately a ½-mile north of the site, across 53<sup>rd</sup> Street North, between the Arkansas River and Ridge Road, there are four large sand pit lakes, three appear to be active extraction operations, with the remaining one retired with a single-family residences built on its banks; CON2000-00012, CU-329, CU-346 and CU-343. SF-20 large tract single-family residences and a SF-20 zoned urban scale subdivision are located west of the site, including a single-family residence built around a small sand pit lake (CU-375; sand extraction). Abutting the southeast portion of the site (Hoover Road and 45<sup>th</sup> Street North intersection) are undeveloped LC Limited Commercial zoned properties. East of the site, across Hoover Road, there are three sand pit lakes, the SF-20 zoned north one has two single-family residences located around it, the SF-20 zoned middle one appears to be retired with no development around it (CU-432; sand extraction) and the SF-5 zoned south one is still operating (CON2004-00045). SF-5 zoned agricultural land and the Brooks solid waste landfill are also located east of the site, across Hoover Road. A finger of SF-5 zoned property with a single-family residence is located on the south end of the proposed sand extraction site, and (Phase I on the site plan) is enclosed on its north, west and east sides by the subject site. A SF-5 zoned single-family subdivision built around sand pit lakes (CU-288 and CU-377; sand extraction) is located south of the site, across 45<sup>th</sup> Street North, as is a SF-20 zoned single-family residence. There are also undeveloped LC zoned lands, LC zoned single-family residences, SF-20 zoned single-family residences and agricultural land located south of the site, across 45<sup>th</sup> Street North. More sand pit lakes (active or inactive sand extraction operations) are located further south, across K-96 highway, of the site. The site is located over the Equus Beds

**CASE HISTORY:** The unplatted property is zoned SF-5.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-20	Farmhouse, agricultural land, single-family residence built around a sand pit lake
SOUTH:	LC, SF-20	Single-family residences built around a sand pit lake, agricultural land, undeveloped land, single-family residences
EAST:	LC, SF-20, SF-5	Undeveloped land Single-family residences built around a sand pit lake, sand pit lake, sand extraction, agricultural land, landfill
WEST:	SF-20	Single-family residences, single-family residence built around a sand pit lake, agricultural land

**PUBLIC SERVICES:** All utilities are available to this site. Access to the site is proposed to be off of Hoover Road, a two-lane arterial road, with 60 feet of full right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this property as “urban development mix,” which is defined as land that is likely to be developed in the next 30-years with uses predominately found in the “urban residential use” category. However there is likelihood that concentrations or pockets of “major industrial uses,” “local commercial uses” and “park and open space uses” may also be developed in this area. The urban development mix category is an area waiting for development trends. The proposed sand extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) and the proposed single-family residential development around the sand pit lake after the conclusion of the extraction operation both fit into the “urban development mix.”

The site is zoned SF-5. The UZC, allows consideration of mining or quarrying as a Conditional Use in the SF-5 zoning district; UZC, Sec-III-D.6.gg. Sec-III-D.6.gg. has 23 supplementary conditions for a mining and quarrying Conditional Use. The SF-5 zoning district is generally compatible with the Comprehensive Plan’s “urban development mix.”

Land Use-Industrial Strategy IV.A.1 recommends protecting industrial areas “from encroachment or expansion of residential land uses by requiring appropriate buffers for expansion of the residential use when a nuisance situation is likely to be created.” The Industrial Locational Guidelines recommend:

- (1) Industrial areas should be located in close proximity to support services such as major arterials, truck routes, highways, utilities trunk lines, rail spurs, and airports and as extensions of existing industrial uses. The site has access onto Hoover Road, an arterial street.
- (2) Industrial traffic not to feed directly into local streets in residential areas. The site has access onto Hoover Road, an arterial street, which will direct its traffic away from the area’s few local streets. Because of the area’s numerous active and retired sand extraction operations, the area’s local streets are confined to two single-family residential subdivisions: a SF-5 zoned subdivision consisting of two streets leading in and out of its cul-de-sac confinement, and; a SF-20 zoned subdivision with through residential streets.
- (3) Located away from existing or planned residential areas, and site so as not to generate industrial traffic through less intensive land use areas. The Conditional Use for sand extraction will generate industrial traffic (primarily dump trucks) through an area that is a mix of agricultural land, single-family residences, active sand extraction operations and single-family residential development built around sand pit lakes.

**RECOMMENDATION:** The request would permit 16-years of industrial use (sand excavation and removal) to provide the greater community with an essential material needed for concrete, which is

required for residential, commercial, and industrial development, maintenance and repair. Its subsequent single-family residential development around the sand pit lake after the conclusion of the extraction operation is a common pattern in the area. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. All 23 supplementary conditions of Sec-III-D.6.g.g., of the Unified Zoning Code will be met.
2. Daily Hours of Operation: Open to public and contractors – 7:00 am to 5:00 pm. Internal operations/pumping – 6:00 am to sunset (per code). The site will be open seven days a week.
3. Phase 1 and Phase 2 will both pump for a maximum of 8 years each, for a total of 16 years total, from the date operations commence. It may be two years before the start of pumping and it may be two months before they strip topsoil, thus the date of the start of the extraction and removal of sands (operations) from the site will be the date the MABCD permits the operations. The applicant will forward that permit date to the MAPD for the case file.
4. The recycling area, as shown on the site plan, will be for stockpiling clean fill material to be used as needed.
5. Aggregate stock piles will be located near the plant site along Hoover Road.
6. The plant site will occupy a 400-foot by 400-foot area (roughly 3.7-acres) on the north side of the existing hedge (currently running east-west, midway on the subject property) with access onto Hoover Road (paved to a two-lane County standard). All fuel storage and equipment storage will be within this area.
7. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

The staff's recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The area is a mix of SF-5, SF-20 and LC zoned agricultural land, single-family residences, active sand extraction operations, single-family residential development built around sand pit lakes, undeveloped retired sand pit lakes and undeveloped commercial properties.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-5, which is meant to accommodate low to moderate density single-family residential development. The excavation and removal of sand (mining and quarrying) can be considered as a Conditional Use in the SF-5 zoning district on a site by site review.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** An increase in truck traffic, soil erosion and blowing dust are a given. However, the area is dominated by active sand extraction operations or retired sand extraction operations that have no development around them or low density to moderate density single-family residential development built around them, as well as agricultural land or small undeveloped commercial land in the area. The proposed use is not out of character with the area.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this property as “urban development mix,” which is defined as land that is likely to be developed in the next 30-years with uses predominately found in the “urban residential use”

category. However there is likelihood that concentrations or pockets of “major industrial uses,” “local commercial uses” and “park and open space uses” may also be developed in this area. The “urban development mix” category is an area waiting for development trends. The proposed sand extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) and the proposed single-family residential development around the sand pit lake after the conclusion of the extraction operation both fit into the Urban Development Mix.

The site is zoned SF-5. The UZC, allows consideration of mining or quarrying as a Conditional Use in the SF-5 zoning district; UZC, Sec-III-D.6.gg. Sec-III-D.6.gg. has 23 supplementary conditions for the mining and quarrying Conditional Use. The SF-5 zoning district is generally compatible with the Comprehensive Plan’s “urban development mix.” The site meets the Industrial Locational Guidelines.

- 5. **Impact of the proposed development on community facilities:** The primary impact of the proposed use is an increase in heavy truck traffic onto Hoover Road.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

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

- 8. **Case No.: CON2014-00013** – Spilled Wine, LLC/PEC (agent) request a City Conditional Use request for an accessory apartment on SF-5 Single-family Residential zoned property described as:

Lot 1, Block 1, Spilled Wine Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicants request a Conditional Use for an “accessory apartment” on property zoned SF-5 Single-family Residential, the site is located on the east side of North Greenwich Road and south of 21st Street North. The property is currently developed with a single-family residence and two accessory structures on the 6.3-acre site. As shown on the site plan, the applicant proposes to demolish the existing residence and accessory structures and replace with a new residential structure, accessory apartment structure and an L-shaped accessory building. The existing drive access from Greenwich Road will remain and the drive lane will be modified to provide access to the new structures.

The property immediately north of the site is zoned LC with limited development. Property east and south of the site is zoned SF-5 and SF-20 and are undeveloped at this time. Abutting the site to the west is Greenwich Road right-of-way; further west is LC Limited Commercial zoned vacant land.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines an “accessory apartment” (Art. II.Sec. II-B.1.b) as a dwelling unit that may be wholly within, or may be detached from a principal single-family dwelling unit. Accessory apartments are also subject to supplementary use regulation Art. III.Sec.III-D.6.a (1) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling unit that may be within the main building, within an accessory building or constructed as an accessory apartment; (2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; (3) the accessory apartment shall remain

accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold as a condominium and (4) the water and sewer service provided to the accessory apartment shall not be provided as separate service from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services.

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

**CASE HISTORY:** The subject property was part of CUP2004-30 DP-277 and associated city case ZON2004-35 and county cases CUP2004-29/ZON2004-34 designating the property to be zoned LC contingent upon platting. Multiple extensions were requested to complete the platting; however, a plat perfecting the LC zoning was never provided. Therefore, CUP2004-30/ZON2004-35 (City) and CUP2004-29/ ZON2004-34 (County) were ruled null and void. A new plat SUB2013-41 was filed and perfected on December 19, 2013 and annexed into the City limit as SF-5 zoning district.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, SF-5	Single-family residence, farming/ranching operation, fast food restaurant
SOUTH:	SF-5, SF-20	Single-family residence
EAST:	SF-5, SF-20	Vacant
WEST:	LC	vacant, commercial

**PUBLIC SERVICES:** The property is serviced by all publicly supplied municipal services. North Greenwich Road is a paved arterial street at this location with 120 feet of right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts this site as “regional commercial.” The “regional commercial” category encompasses major destination areas (centers and corridors) containing concentrations of commercial, office, and personal service uses that have predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships and big box retail outlets with a regional market draw. Regional Commercial areas may also include residential housing and uses typically found in Local Commercial areas.

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

1. The Conditional Use permits one single-family accessory apartment on the site. The site shall be developed and maintained in general conformance with the approved site plan, the approved elevation drawing, and in conformance with all applicable regulations, including but not limited to: local zoning, including Article III, Section III-D.6 .a.(1)-(4); building, fire and utility regulations or codes.
2. The applicant shall submit an elevation drawing to be approved by planning staff, demonstrating dimensions and exterior materials.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property immediately north of the site is zoned LC with limited development, east and south of the site is zoned SF-5 and SF-20 which are undeveloped at this time. Abutting the site to the west is Greenwich Road right-of-way; further west is LC Limited Commercial zoned vacant land.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned SF-5 which permits the existing single-family residence. The property could continue to be used for one single-family residence; the depth of the property easily accommodates an accessory apartment and the additional required parking space.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby properties. The accessory apartment site is well screened from neighboring lots. The conditions of approval should minimize any anticipated detrimental impacts.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as “regional commercial.” The “regional commercial” category encompasses major destination areas (centers and corridors) containing concentrations of commercial, office, and personal service uses that have predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships and big box retail outlets with a regional market draw. Regional Commercial areas may also include residential housing and uses typically found in Local Commercial areas.
5. Impact of the proposed development on community facilities: If this request is approved, the site is served by municipal services that are able to accommodate projected demand created by this request.

**DALE MILLER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

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

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9. **Case No.: CUP2014-00006** – Westway Plaza LLC/Jeff Griffith request a City Amendment to CUP Community Unit Plan DP-21 to permit "recreation and entertainment outdoor on property described as:

Lot 16 EXCEPT the North 10 feet, Block R; 1<sup>st</sup> Addition to Woodlawn Village, Sedgwick County, Kansas.

**BACKGROUND:** The application area is Parcels 1 and 13 of the Westway Shopping Center Community (CUP) DP-21 located at the southwest corner of the intersection of West Pawnee Road and South Seneca Street. Parcels 1 (11.36 acres) and 13 (6.90 acres) are zoned LC Limited Commercial (LC) subject to the development standards contained in CUP DP-21. The application area is developed with several thousand square feet of shopping center and a large parking lot. Uses permitted on both parcels include: shopping center and associated tires, batteries and accessory stores, supermarket, financial institutions, offices, personal services, retail sales as permitted by the base zoning, vocational school and restaurant. The applicant has requested the following use be added to the list of permitted uses "Outdoor entertainment, in the form of carnival rides, games and concessions, shall be allowed for a period of 14 consecutive days between the dates of March 1<sup>st</sup> and April 30<sup>th</sup> and for an additional 14 consecutive days between the dates of October 1<sup>st</sup> and November 30<sup>th</sup> each year. Owner to obtain all necessary licenses and permits."

For several years, the shopping center has allowed a carnival to operate in the parking lots located in the application area. Recently it came to the attention of the carnival operator that the center was not properly zoned to permit a carnival. With the permission of the property owner, the carnival operator has retained an agent to file this request to operate a carnival for up to 14 days, twice a year on Parcels 1 and 13 of the Westway Shopping Center. (If approved, hours of operation for a given day will be regulated by the Community Event Permit.)

Community Unit Plan DP-21 contains 14 parcels. The following uses are permitted in all of the parcels not associated with the current application: offices, personal services and retail sales as permitted by the base zoning. Some of the parcels not associated with this request also permit restaurants and financial institutions. Nearly all of CUP DP-21 is zoned LC except for a narrow border along the west and south side of the CUP that is zoned GO General Office.

All of the parcels located immediately to the east (Parcels 5-12) and west (Parcels 2A, 2B, 3 and 4) of the application area are located within DP-21, and are part of the Westway Shopping Center. The parcels located within DP-21, but not included in the application area are primarily zoned LC, subject to the development standards contained in DP-21, and are developed with a bank, restaurants, post office or are vacant. Properties located south of the shopping center, across Crawford Street, are zoned SF-5 Single-family Residential (SF-5), and are developed with single-family residences. Land located north of the site are zoned LC except for one ownership that is zoned B Multi-family Residential (B) and SF-5. The LC zoned properties located to the north are developed with a variety of commercial, retail and restaurant uses. The B and SF-5 zoned property is developed with a church.

**CASE HISTORY:** On November 5, 1957, the Board of City Commissioners (today's City Council) approved Z-0029, which was a zone change from the AA (today's SF-5 Single-family Residential), RB

(today's MF-29 Multi-family Residential) and LC districts to the BB (today's GO General Office) and LC districts. On July 1, 1975, the Board of City Commissioners approved Z-1698, which was a zone change from the BB (today's GO) and LC districts to the R-6 (today's MF-29) district. However, case number Z-1698 was ultimately denied and closed due to failure to plat the property. Board of Zoning Adjustment case BZA 14-84 granted a "use exception" to permit a nursery and garden center. On June 11, 1985, the Board of City Commissioners approved an amendment to DP-21 that created individual parcels for buildings fronting Seneca Street and Pawnee Road, and zone change Z-2687, BB (today's GO) to LC. In 1986 an administrative interpretation was granted to allow the construction of a canopy within the 90-foot building setback located along Seneca Street. Vacation case V-2037 (June 12, 1997) vacated a portion of a platted 90-foot building setback. On July 21, 1997, an administrative adjustment to Parcel 10 permitted an automatic teller machine within the aforementioned vacated platted building setback. On April 29, 1998, an administrative adjustment was approved to reduce the building setback from 90 feet to 29 feet on Parcel 11. On August 24, 1998, an administrative adjustment to reduce the building setback from 90 feet to 30 feet on Parcel 1 was approved. Another administrative adjustment was approved that reduced the building setback from 90 to 2 feet for another portion of Parcel 1. On September 13, 1999, an administrative adjustment was approved to permit the relocation of a "nursery and garden center" on Parcel 1. On January 5, 2001, an administrative adjustment was approved to divide the original Parcel 2 into two parcels, Parcels 2A and 2B, and to establish the development standards associated with the two parcels. On August 19, 2003, an administrative adjustment was approved to permit a "vocational school" on Parcel 1. On November 26, 2003, an administrative adjustment to add "restaurant" to the list of permitted uses on Parcel 1, and to reduce building setbacks on Parcels 1, 5, 6, 7, 8, 9, 10, and 11 to 35 feet to correspond with VAC2003-00048 that reduced a platted setback located on the same parcels just noted.

**ADJACENT ZONING AND LAND USE:**

North: LC, B, SF-5; a variety of commercial, retail and restaurant uses, church

South: SF-5; single-family residential

East: LC; a variety of commercial, retail and restaurant uses, church

West: SF-5; single-family residential

**PUBLIC SERVICES:** The site is served by all municipal and franchise facilities. Both South Seneca and West Pawnee are paved four-lane arterial streets. The Pawnee Avenue and Seneca Street intersection carries on an average day 18,000 to 22,400 vehicle trips.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide" depicts the site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal services uses that do not have a significant regional market draw. The range of uses include: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small-scale, light manufacturing uses.

**RECOMMENDATION:** Based upon the information available at the time this report was prepared, it is recommended to approve the request and add the following language: "Outdoor entertainment, in the form of carnival rides, games and concessions, shall be allowed for a period of 14 consecutive days between the dates of March 1<sup>st</sup> and April 30<sup>th</sup> and for an additional 14 consecutive days between the

dates of October 1<sup>st</sup> and November 30<sup>th</sup> each year. All required permits or licenses shall be obtained prior to the placement or installation of any equipment associated with carnival rides, games or concessions.”

The recommendation is subject to the following conditions:

1. The amendment permits on Parcels 1 and 13 of DP-21: outdoor entertainment, in the form of carnival rides, games and concessions that shall be allowed for a period of 14 consecutive days between the dates of March 1<sup>st</sup> and April 30<sup>th</sup> and for an additional 14 consecutive days between the dates of October 1<sup>st</sup> and November 30<sup>th</sup> each year. All required permits and licenses, including but not limited to a Community Event Permit and temporary building permits, shall be obtained prior to the placement or installation of any equipment associated with carnival rides, games or concessions, except the number of days for the use(s) permitted by this amendment shall be controlled by the CUP and not by UZC Sec. III-B.14.e(4). Required inspections shall be obtained prior to opening the carnival rides, games and concessions to the public.
2. The amendment does not permit, without proper approval, the display, sales or storage of vehicles, equipment or other merchandise not typically associated with carnival rides, games and concessions. However, nothing in this condition is to prohibit the outdoor display, sale or storage of merchandise customarily offered for sale by businesses occupying Parcels 1 and 13 of DP-21 provided any such activities are legally conducted and have been properly reviewed and approved as may be required by any applicable codes or regulations.
3. No temporary equipment, trailers, buildings or appurtenances shall be located within any setbacks or easements.
4. 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. Portable bathroom facilities are permitted only with the approval of the MABCD.
5. All uses approved by this CUP shall be located on paved surfaces.
6. The use of outdoor speakers or amplifiers is permitted so long as they are used in conformance the City’s noise ordinance.
7. As a condition of obtaining the required permits for the uses permitted by this amendment, the applicant shall demonstrate that enough parking remains to serve permanent uses located on the site once the carnival rides, games and concessions have been located on the site.
8. The transfer of title of all or any portion of the land included within the CUP 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.
9. 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.
10. 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: All of the parcels located immediately to the east (Parcels 5-12) and west (Parcels 2A, 2B, 3 and 4) of the application area are located within DP-21, and are part of the Westway Shopping Center. The parcels located within DP-21 but not included in the application area are primarily zoned LC, subject to the development standards contained in DP-21, and are developed with a bank, a post office, restaurants or are vacant. Properties located south of the shopping center, across Crawford Street, are zoned SF-5, and are developed with single-family residences. Land located north of the site are zoned LC except for one ownership that is zoned B and SF-5. The LC zoned properties located to the north are developed with a variety of commercial, retail and restaurant uses. The B and SF-5 zoned property is developed with a church. All four corners of the intersection of Pawnee Avenue and Seneca Street are zoned LC and developed with retail or commercial uses. Pawnee Avenue and Seneca Street are arterial streets. The Pawnee and Seneca intersection carries on an average day 18,000 to 22,400 vehicle trips.
2. The suitability of the subject property for the uses to which it has been restricted: The application area is zoned LC subject to the development standards contained in DP-21. Specific uses permitted on the subject parcels are: shopping center and associated tires, batteries and accessory stores, supermarket, financial institutions, offices, personal services, retail sales as permitted by the base zoning, vocational school and restaurant. The site is developed with several thousand square feet of shopping center. The center could continue to have economic value as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: In as much as the carnival has operated at this location in the past without known complaints, approval of the request should not detrimentally impact nearby properties. The maximum number of days in which the carnival could operate is limited to 28 days a year, and the recommended conditions of approval should minimize potential impacts.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request would permit the owner of the center and the carnival operator the opportunity to realize additional economic return and to provide southwest Wichita with carnival entertainment. Denial would be a loss of economic opportunity to both the center and the carnival operator.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” depicts the site as appropriate for “local commercial” uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal services uses that do not have a significant regional market draw. The range of uses include: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small-scale, light manufacturing uses. On a temporary basis, approval to allow a carnival to operate at this location can be consistent with adopted land use plans and policies.
6. Impact of the proposed development on community facilities: None identified.

**DALE MILLER**, Planning Staff presented the Staff Report.

He referred to e-mail handouts opposed to the application.

**GOOLSBY** asked about hours of operation and if the Community Event Permit regulated that.

**MILLER** said he believed hours could be as late as 2:00 a.m., but he was not sure about that.

**DENNIS** said since this site is located next to a neighborhood he would like to verify how late the applicant is allowed to operate.

**JEFF GRIFFITH, ATTORNEY/AGENT FOR APPLICANT WESTWAY PLAZA AND OTTOWAY AMUSEMENT** referred to the site map and said the carnival will occur in the north end of the parking lot in Parcel 1 with a small portion spilling over into Parcel 13. He said Ottoway Amusement has been in business since the 1980's and has set up at this location on this route since then, with the exception of several years when the economy was not good. He said they have been at this location for the last six years. He said typically they operate Friday to Sunday. He said last year it was discovered that the zoning on this property only allowed for two days a month. He mentioned the difficulty involved in setting up and tearing down a carnival. He said this use is not anything that has not been going on at the location. He said they received one phone call from a citizen concerned that they were going to build a Joyland at the site. He concluded by saying that they agree with the conditions listed in the Staff Report.

**GOOLSBY** asked for the specific rationale for setting up at this site as opposed to Lawrence Dumont Stadium.

**GRIFFITH** indicated Ottoway sets up a Lawrence Dumont Stadium during River Festival. He said other locations include a shopping center on the east side, this site and Builders Square at one time; however, they lost the Builders Square site. He said they also travel in southern Kansas and Northern Oklahoma.

**FOSTER** asked about security at the venue.

**GRIFFITH** indicated they hire off-duty Wichita Police personnel and added that the permit also requires that they provide security.

**KLAUSMEYER** asked the agent to address the comments made by the surrounding neighbors regarding trespassing, being threatened by carnival clientele, etc.

**GRIFFITH** commented that this is a class operation that has been at this site for many years. He added that there is a pretty substantial on-site security presence; however, they cannot prevent kids or other patrons of the carnival from walking down residential streets or entering the residential area surrounding the venue.

Staff indicated that DAB IV unanimously approved the application.

**MILLER** suggested including the hours of operation, whether it be midnight or 2:00 a.m, as part of the conditions if the Commission wants to be more specific than whatever the event license requires.

**GOOLSBY** mentioned that he lives down the street and that the area becomes a zoo whenever the carnival is there.

**GRIFFITH** indicated that they typically close by midnight.

There was considerable discussion regarding hours of operation and legal staff determined that the event permit does not set the hours of operation. Hours established by ordinance were 10:30 p.m. weekdays and midnight on weekends.

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **NEUGENT** seconded the motion, and it carried (8-1).  
**GOOLSBY** – No.

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The Metropolitan Area Planning Commission adjourned at 2:50 p.m.

State of Kansas        )  
Sedgwick County     ) <sup>ss</sup>

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 \_\_\_\_\_, 2014.

(SEAL)

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