

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

**MINUTES**

**April 24, 2014**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 24, 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: Matt Goolsby; Vice Chair; David Dennis; David Foster; Bill Johnson; Joe Johnson; John McKay Jr. (Out @2:25 p.m.); M.S. Mitchell; George Sherman and Debra Miller Stevens. Don Klausmeyer; Carol Neugent; Bill Ramsey; Don Sherman and Chuck Warren were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Jess McNeely, 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 April 10, 2014 meeting minutes.

**MOTION:** To approve the April 10, 2014 meeting minutes, as amended.

MCKAY moved, J. JOHNSON seconded the motion, and it carried (6-0-3). MILLER STEVENS, MITCHELL and G. SHERMAN - Abstained.

-----

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2014-00011: FINAL PLAT - FALCON FALLS 5TH ADDITION**, located on the north side of 45th Street North, west side of Hillside.

NOTE: This is a replat of the Falcon Falls Commercial Addition. This site is also included in Falcon Falls Commercial Community Unit Plan (CUP DP-283). The applicant proposes a zone change (with the exception of Lots 1 and 32, Block A) to TF-3 Two-family Residential.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department requests the extension of water (distribution) and the extension of sewer (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.
- D. Traffic Engineering has approved the access controls. The plat proposes one street opening and one access opening along both Hillside and 45<sup>th</sup> Street North.
- E. The easement between Lots 29 and 30 needs to be labeled.
- F. 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.

- G. 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.
- H. 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.
- I. The Applicant needs to request a CUP adjustment as the CUP parcel boundaries, building setbacks and access controls need to be revised to correspond with the plat.
- J. This property is within a zone identified by the City Engineer's office as likely to have groundwater at some or all times within ten feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineer's office.
- K. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- L. GIS has approved the plat's street names.
- M. The Applicant shall guarantee the paving of the proposed streets.
- 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 plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- Q. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- R. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one 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.

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

-----

- 2-2. **SUB2014-00012: Final Plat – HAWTHORNE 5TH ADDITION**, located on the East side of 127th Street East, north of 21st Street North.

NOTE: This is a replat of a portion of the Hawthorne Addition. The applicant is requesting a zone change from LC Limited Commercial to SF-5 Single-family Residential.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department requests the extension of water (distribution) and the extension of sewer (laterals) to serve all lots. All lots are subject to water transmission in-lieu-of-assessments.
- 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.
- D. The plat proposes complete access control along 127<sup>th</sup> Street East.
- E. 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.
- F. The Applicant shall guarantee the paving of the proposed streets.
- G. 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. 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.
- H. Since Reserve D includes a community 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. The Applicant needs to request a CUP amendment as this property will be removed from the CUP.

- L. GIS has approved the street names.
- M. County Surveying advises that the dimension on the south line of Lot 11, Block A needs corrected.
- 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 plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- R. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one 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.

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

-----  
**2-3. SUB2014-00013: Final Plat – RIDGE 400 3RD ADDITION**, located south of Maple, on the east side of Ridge Road.

NOTE: This is a replat of a portion of the Westerlea Village Addition. A portion of the site has been approved for a zone change (ZON2011-00027) from SF-5 Single-family Residential to LC Limited Commercial subject to replatting. The property is also subject to Protective Overlays #248, #258 and #251 addressing signage, lighting, noise, building height, screening and permitted uses.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve the site. A guarantee is needed for the removal of water meters.
- 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.
- D. Traffic Engineering has requested complete access control along Summitlawn which has been denoted on the final plat. As shown on the site plan, Traffic Engineering has approved one opening along Taft which will be denoted on the final tracing.
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- F. As the plat consists of commercial lots abutting non-arterial streets, the Subdivision Regulations require sidewalks along the street frontage. The Subdivision Committee has required a petition for a sidewalk along Taft contingent upon a connection to the southeast corner or southwest corner of the property.
- G. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved Protective Overlays and their special conditions for development on this property.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. A restrictive covenant shall be submitted regarding ownership and maintenance responsibilities.

- I. 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.
- J. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the appropriate governing body.
- K. 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.
- L. The platlor'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.
- M. 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.)
- N. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- O. 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.
- P. 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.
- Q. 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.
- R. Perimeter closure computations shall be submitted with the final plat tracing.

S. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.

T. 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)).

**STRAHL** explained that there was extensive discussion regarding access control and sidewalks at the Subdivision Committee meeting. He mentioned complete access control on Summitlawn to the east and one opening along Taft. He said since this is a commercial property abutting non-arterial streets, the Sidewalk Ordinance requires sidewalks on all street frontages. He said Traffic Engineering waived the sidewalk to the west along Ridge Road, but still required sidewalks along Taft and Summitlawn to the east. He clarified that the Sidewalk Ordinance allows waivers for design issues; parks and also for a non-pedestrian generating site. He said the applicant objected to the north/south sidewalk on the east along Summitlawn. He said after considerable discussion, the consensus of the Subdivision Committee was that the sidewalk along Summitlawn to the east could be waived. He added the sidewalk along Taft could also be waived contingent upon its connection to a sidewalk to the east or west. He said there would need to be a connecting link along Taft to the east or west to trigger the need for the applicant to construct a sidewalk along Taft. It was noted that the Subdivision Committee recommended approval 4-0.

**PHIL MEYER, BAUGHMAN COMPANY, PA, 315 SOUTH ELLIS, AGENT FOR APPLICANT** said they are in agreement with the conditions approved by the Subdivision Committee.

**B. JOHNSON** asked if a wall would be required along the east side.

**MEYER** said yes and added that the screening wall along Summitlawn will match what currently exists in the area.

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

**MITCHELL** moved, **J. JOHNSON** seconded the motion.

**FOSTER** requested further discussion on the issue and requested that the Traffic Engineer provide input on the issue since he had originally recommended sidewalks along Taft and Summitlawn.

**BRIAN COON, PUBLIC WORKS AND UTILITIES, TRAFFIC ENGINEERING** mentioned that this recommendation was waiving a sidewalk required under City Ordinance. He mentioned that on the south side of Taft there is a wheelchair ramp leading to the north; however, it does not have a connecting point and dead ends. He mentioned the existing sidewalks along Mid Continent and Ridge and sidewalks past the I-Hop and movie theater, and the sidewalk that runs along Taft all the way to Hoover Road. He said if the City would install the connecting ramp and sidewalk along Summitlawn that would complete the north side. He said any connection on the east would run through peoples yards and landscaping. He said standard policy is that sidewalks and wheelchair ramps have a destination. He said the current ramp should either be taken out or completed on the north side.

**FOSTER** said the applicant made the comment that the connection to the neighborhood was not that critical; however, he said seeing the number of rooftops, sidewalks would invite the neighbors to come to the businesses.

**SUBSTITUE MOTION:** To approve the original staff recommendation to require sidewalks along Summitlawn and Taft.

**FOSTER** moved, **DENNIS** seconded the motion, and it failed (2-7). **GOOLSBY, B. JOHNSON, J. JOHNSON, MCKAY, MILLER STEVENS, MITCHELL** and **G. SHERMAN** – No.

**MICHAEL BYINGTON, CERTIFIED ORIENTATION AND MOBILITY SPECIALIST, ENVISION, 610 NORTH MAIN** said as a point of policy it is very frustrating to see situations where access features apply to individuals with disabilities who can't necessarily see across the street. He said they don't like to see the implication where an individual enters a traffic way and there is no safe way to get out of that traffic way. He said they do not like to see individuals surprised when they get to the other side of a street and there is no access. He concluded by requesting that the wheelchair ramp not be removed and that access be provided in the area.

The **ORIGINAL MOTION** passed (9-0).

-----  
**2-4. SUB2014-00017: Final Plat – GLASER ADDITION**, located east of 143rd Street East, south of 71st Street South.

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

**STAFF COMMENTS:**

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact Metropolitan Area Building and Construction Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Sedgwick County Rural Water District No. 3. If service is available, feasible and the property is eligible for service, Metropolitan Area Building and Construction Department recommends connection.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. County Public Works has approved the applicant's drainage plan.
- E. Sedgwick County Fire Department advises that the plat will need to comply with the Sedgwick County Service Drive Code.

- F. County Public Works notes that per Subdivision Regulation section 7-201(G)(5), suburban collector streets require an 80-foot right-of-way. A dedication is needed of 40 feet of half street right-of-way which has been denoted on the final plat.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The 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.)
- I. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- J. 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.
- K. 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.
- L. 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.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- O. 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.

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

-----  
2-5. **SUB2014-00018: One –Step Final Plat – SONIC ADDITION**, located on the east side of Broadway, north of Kellogg.

NOTE: This is a replat of a portion of the Fordham's Addition in addition to unplatted property.

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 drainage plan. Since the development will be less than an acre, detention and stormwater quality treatment will not be required. This development will not be required to extend drainage to the site, since the public stormwater system is located north of Lewis and west of Broadway.
- D. The plat denotes one opening along Broadway. Traffic Engineering has approved the access controls and revised site plan subject to the applicant providing a mirror at the west side of the alley to allow emerging drivers to simultaneously see both traffic exiting the subject site as well as pedestrians that may be hidden from view at the sidewalk to the east.
- E. 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.
- F. 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.)
- G. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- H. 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.
- I. 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.

J. 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.

K. Perimeter closure computations shall be submitted with the final plat tracing.

L. Westar Energy has requested a utility easement for an existing overhead electric line located near the east property line. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.

M. 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.

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

-----  
**3. PUBLIC HEARING – VACATION ITEMS**

**3-1. VAC2014-00009: City request to vacate a portion of platted front and street side yard setbacks on property**, generally located east of West Street, south of 13th Street North, on the northwest corner of High and 11th Streets (1201 N High).

**OWNER/APPLICANT:** Oscar & Jennifer Lopez (owners/applicants)

**LEGAL DESCRIPTION:** Generally described as vacating the west 1-foot of the platted 30-foot front yard setback running parallel High Street and the north 9 feet of the platted 30-foot street side yard setback running parallel to 11<sup>th</sup> Street North, all on Lot 4, the Pleasant Acres Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located east of West Street, south of 13th Street North, on the northwest corner of High and 11th Streets (1201 N High – WCC VI)

**REASON FOR REQUEST:** Remove existing encroachments

**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 following vacations, all located on the SF-5 Single-Family Residential zoned key corner, Lot 4, the Pleasant Acres Addition, Wichita, Sedgwick County, Kansas.

- The vacation of the north 9 feet of the platted 30-foot street side yard setback running parallel to 11th Street North. The Unified Zoning Code's (UZC) minimum street yard setback for the SF-5 zoning district is 15 feet; the applicant's request would result in a 21-foot street side yard and remove an encroaching detached garage and an approved accessory apartment\* from the setback; \*CON2013-00034, conversion of an existing accessory structure into an accessory apartment.
- The vacation of the west 1-foot of the platted 30-foot front yard setback running parallel to High Street. The UZC's minimum front yard setback for the SF-5 zoning district is 25 feet; the applicant's request would result in a 29-foot front yard setback and remove the encroaching principle single-family residence (built 1949) from the setback.

There are no platted easements located within the setbacks. 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. Westar has equipment along the High Street side of the site. The Pleasant Acres Addition was recorded with the Register of Deeds May 26, 1950.

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 portions of the platted street side yard and front yard setbacks.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 3, 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 and front yard setbacks, and that the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate the west 1-foot of the platted 30-foot front yard setback running parallel High Street and the north 9 feet of the platted 30-foot street side yard setback running parallel to 11th Street North, all on Lot 4, the Pleasant Acres Addition.
- (2) Dedicate easement for the Westar equipment located along the High Street side of the subject site. Approval of this Westar easement must be provide to Planning prior to the case going to the County Commission for final action.

- (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 the west 1-foot of the platted 30-foot front yard setback running parallel High Street and the north 9 feet of the platted 30-foot street side yard setback running parallel to 11th Street North, all on Lot 4, the Pleasant Acres Addition.
- (2) Dedicate easement for the Westar equipment located along the High Street side of the subject site. Approval of this Westar easement must be provide to Planning prior to the case going to the County Commission for final action.
- (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.

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

- 3-2. **VAC2014-00010: County request to vacate street right-of-way dedicated by separate instrument on property**, generally located on the west side of Meridian Avenue and north of 101st Street North.

**APPLICANT/AGENT:** Tracy Clemons (applicant/owner) Savoy Company PA, Mark Savoy (agent)

**LEGAL DESCRIPTION:** Generally described as the north 70 feet of the east 4-acres of the south 10-acres of the NE1/4 of the SE1/4 of Sec.13, Twp.25-S, R-1-W of the 6<sup>th</sup> PM, Sedgwick County, Kansas, except the east 60 feet thereof (FLM 331, PGS 572-573)

**LOCATION:** Generally located on the west side of Meridian Avenue and north of 101st Street North (10425 N Meridian Avenue - BoCC 4)

**REASON FOR REQUEST:** Right-of-Way Agreement recorded October 12, 1978, but subsequently no other dedications of right-of-ways to connect with the subject right-of-way

**CURRENT ZONING:** The site is a public street right-of-way. All abutting and adjacent properties are zoned RR Rural Residential. The applicant proposes to vacate the unimproved street right-of-way dedicated by separate instrument; Right-of-Way Agreement, FLM 331, PGS 572-573, recorded October 12, 1978. The 70-foot wide right-of-way runs approximately 490 feet west from Meridian Avenue/24<sup>th</sup> Street West, along the north end of the applicant's property where it dead-ends, in the applicant's property. The subject right-of-way was and still serves as a second (north) drive onto the applicant's property. There is approximately 245 feet of separation from the north subject right-of-way/drive and the south drive. SUB2009-00070 was a plat of the subject property that was never recorded. There is no public water or sewer located in the right-of-way. Westar has equipment located in the right-of-way.

Because the site is located within the City of Valley Center's Area of Zoning Influence, consideration and recommendation by their planning commission is required. This request will be considered Valley Center Planning Commission at their April 22, 2014, Tuesday night meeting at 7:00 pm. in the Valley Center Council Chambers of City Hall.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from County Public Works, Water & Sewer, 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 portion of the unimproved, street right-of-way dedicated by separate instrument; Right-of-Way Agreement, FLM 331, PGS 572-573.

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

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 3, 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 street right-of-way dedicated by separate instrument; Right-of-Way Agreement, FLM 331, PGS 572-573, 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) Dedicate a portion of the described vacated portion of the unimproved, street right-of-way dedicated by separate instrument; Right-of-Way Agreement, FLM 331, PGS 572-573 as a utility easement for Westar's equipment. Approval of this Westar easement must be provide to Planning prior to the case going to the County Commission for final action.
- (2) Any relocation or reconstruction of all utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense shall be to County Standards. If needed provide a private project for relocation of utilities. The approved private project number must be provided to Planning prior to the case going to County Commission and subsequent recording with the Register of Deeds. If these are franchised utilities , provide Planning with approval from the participating franchised utility
- (3) Provide original restrictive covenant(s) binding and tying the vacated portion of the vacated subject street right-of-way to applicants' abutting property. These must be provided to Planning prior to the case going to the County Commission and subsequent recording with the Register of Deeds.
- (4) Provide Planning with a legal description of the vacated street 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) Provide County Fire and Public Works with any needed improvements, per County Standards and at the applicants' expense.
- (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) Dedicate a portion of the described vacated portion of the unimproved, street right-of-way dedicated by separate instrument; Right-of-Way Agreement, FLM 331, PGS 572-573 as a utility easement for Westar's equipment. Approval of this Westar easement must be provide to Planning prior to the case going to the County Commission for final action.
- (2) Any relocation or reconstruction of all utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense shall be to County Standards. If needed provide a private project for relocation of utilities. The approved private project number must be provided to Planning prior to the case going to County Commission and subsequent recording with the Register of Deeds. If these are franchised utilities , provide Planning with approval from the participating franchised utility
- (3) Provide original restrictive covenant(s) binding and tying the vacated portion of the vacated subject street right-of-way to applicants' abutting property. These must be provided to Planning prior to the case going to the County Commission and subsequent recording with the Register of Deeds.
- (4) Provide Planning with a legal description of the vacated street 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) Provide County Fire and Public Works with any needed improvements, per County Standards and at the applicants' expense.
- (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.

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

- 
- 3-3. VAC2014-00011: City request to vacate a platted street right-of-way**, generally located west of Meridian Avenue, north of Pawnee Avenue, between Custer and Sheridan Avenues.

**APPLICANTS/AGENT:** Capps Holding LLC, Ron Capps & Hijos LLC, Patricia G Koehler (applicants) Savoy Company PA, Mark Savoy (agent)

**LEGAL DESCRIPTION:** Generally described as the platted 80-foot Lydia Avenue right-of-way that is located between Custer Avenue (east side), Lots 2 & 3, Block 6, Southwest Industrial Addition (north side), Sheridan Avenue (west side), and Lots 1 & 12, Block 7, Southwest Industrial Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located west of Meridian Avenue and north of Pawnee Avenue (WCC #IV)

**REASON FOR REQUEST:** Revert the unimproved street right-of-way into private property

**CURRENT ZONING:** The site is a public street right-of-way. All abutting and adjacent properties are zoned LI Limited Industrial

The applicants propose to vacate that portion of the unimproved Lydia Avenue located between Custer Avenue (east side), Lots 2 & 3, Block 6, Southwest Industrial Addition (north side), Sheridan Avenue (west side), and Lots 1 & 12, Block 7, Southwest Industrial Addition. The applicants own the abutting properties. The proposed vacation does not deny access to public streets for any abutting or adjacent properties. There is no water or sewer located within the Lydia Avenue right-of-way. The applicants' exhibit shows a proposed 20-foot wide stormwater easement located in the north 25 feet of the subject right-of-way. The Southwest Industrial Addition was recorded with the Register of Deeds August 8, 1953.

NOTE: Two previous vacation cases vacated Lydia Avenue from Meridian Avenue to Custer Avenue; V-1408 and VAC2007-00036, which finished V-2115 a previous case that was withdrawn. If approved VAC2014-00011 removes the last remnant of the east-west Lydian Avenue from the Southwest Industrial Addition. These vacations plus the vacation of Orient Boulevard, V-2063, direct the Southwest Industrial Addition traffic north to south to Pawnee Avenue, unless the property abuts Meridian Avenue.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from Public Works, Water & Sewer, Stormwater, Traffic, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the portion of the unimproved, platted, 80-foot Lydia Avenue street right-of-way.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 3, 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 right-of-way, 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) Dedicate two stormwater easements as approved by the Stormwater Engineer. One shall be an east-west stormwater easement and the second shall be a north-south stormwater easement. These original dedications must be provided to Planning prior to the case going to the City Council and subsequent recording with the Register of Deeds.
- (2) Any relocation or reconstruction of all utilities made necessary by this vacation shall be the responsibility of the applicants, at the applicants' expense and shall be to City Standards. Provide any needed plans for possible drainage improvement to Stormwater. If needed provide a private project for relocation of utilities. The approved private project number must be provided to Planning prior to the case going to the City Council and subsequent recording with the Register of Deeds.
- (3) If needed per the recommendation of the Stormwater Engineer and the Subdivision Engineer close the existing paved entrance onto Lydia Avenue from Custer Avenue. This will at the applicants' expense and shall be to City Standards.
- (4) Provide original restrictive covenant binding and tying the vacated portion of the vacated street right-of-way to applicants' abutting property. These must be provided to Planning prior to the case going to the city Council and subsequent recording with the Register of Deeds.
- (5) Provide Planning with a legal description of the vacated street on a Word document, via e-mail. This must be provided to Planning prior to the case going to City Council for final action.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Dedicate two stormwater easements as approved by the Stormwater Engineer. One shall be an east-west stormwater easement and the second shall be a north-south stormwater easement. These original dedications must be provided to Planning prior to the case going to the City Council and subsequent recording with the Register of Deeds.
- (2) Any relocation or reconstruction of all utilities made necessary by this vacation shall be the responsibility of the applicants, at the applicants' expense and shall be to City Standards. Provide any needed plans for possible drainage improvement to Stormwater. If needed provide a private project for relocation of utilities. The approved private project number must be provided to Planning prior to the case going to the City Council and subsequent recording with the Register of Deeds.

- (3) If needed per the recommendation of the Stormwater Engineer and the Subdivision Engineer close the existing paved entrance onto Lydia Avenue from Custer Avenue. This will be at the applicants' expense and shall be to City Standards.
- (4) Provide original restrictive covenant binding and tying the vacated portion of the vacated street right-of-way to applicants' abutting property. These must be provided to Planning prior to the case going to the city Council and subsequent recording with the Register of Deeds.
- (5) Provide Planning with a legal description of the vacated street on a Word document, via e-mail. This must be provided to Planning prior to the case going to City Council for final action.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

-----  
**PUBLIC HEARINGS**

4. **Case No.: ZON2014-00004 and CUP2014-00008** - Heights, LLC I (Jay Russell) / Baughman Company, P.A. (Russ Ewy) request a City zone change from LC Limited Commercial to TF-3 Two-family Residential and City amendment to eliminate CUP Community Unit Plan DP-283 on property described as:

Lots 1 and 2, Block A, Falcon Falls Commercial Addition to Wichita, Sedgwick County, Kansas .

**BACKGROUND:** The applicant is requesting the abolition of Community Unit Plan (CUP) DP-283, the Falcon Falls Commercial CUP, and the down zoning of the application area's LC Limited Commercial (LC) zoning to TF-3 Two-family Residential (TF-3). The application area is platted as the Falcon Falls Commercial Addition, contains approximately 20.46 acres and is located at the northwest corner of the intersection of East 45<sup>th</sup> Street North, Highway K-254 and North Hillside Avenue.

Community Unit Plan DP-283 and its associated LC zoning were approved by the City Council on May 17, 2005, subject to platting within two years. The Falcon Falls Commercial Addition was recorded on December 9, 2005. The CUP contains two parcels, both zoned LC, that permit all LC uses except: adult entertainment, sexually oriented business, group residence, correctional placement residence, asphalt/concrete plant, private club, tavern and drinking establishment. The site is undeveloped.

It is the applicant's belief that the site has an improved chance for development if the current LC zoning and CUP were removed and replaced with TF-3 zoning. The TF-3 district primarily permits single-

family and two-family residential uses. As currently zoned, the site can be developed with uses permitted in the requested TF-3 district. However, lending institutions may refuse to offer residential interest rates for residences located in non-residential zoning districts or may not offer mortgages for residences located in non-residential zoning districts. Besides the mortgage question, if the existing CUP were to be left in place, a number of development requirements that are not normally associated with residential development would be present or required, such as: potential for incompatible LC uses to be legally located within the development that is being redirected to a residential development instead of office or commercial uses; masonry screening walls instead of wooden fencing, berms or landscaping; architectural compatibility; commercial or office signage that would not normally be found in a residential area or increased setbacks when compared to the TF-3 district.

Immediately north and west of the application area is a drainage reserve that is zoned SF-5 Single-family Residential (SF-5). North and west of the drainage reserve is a SF-5 zoned residential subdivision. East, across North Hillside Avenue, is an undeveloped SF-20 Single-family Residential (SF-20) subdivision. South of the site, across K-254 Highway on unzoned right-of-way, is a KDOT maintenance yard. Further south is undeveloped LC and SF-5 zoned property.

Community Unit Plans are required by the Unified Zoning Code for land that is: zoned LC or GC General Commercial (GC), six acres or more in size and held under unified ownership at the time of initial approval.

**CASE HISTORY:** Community Unit Plan DP-283 (CUP2005-00014) and its associated LC zoning (ZON2005-00010) were approved by the City Council on May 17, 2005, subject to platting within two years. The Falcon Falls Commercial Addition was recorded on December 12, 2005.

**ADJACENT ZONING AND LAND USE:**

North: SF-5; Reserve C of the Falcon Falls residential subdivision

South: LC; KDOT maintenance yard

East: SF-20; undeveloped platted residential subdivision

West: SF-5; Reserve C of the Falcon Falls residential subdivision

**PUBLIC SERVICES:** Municipal sanitary sewer and water services are adjacent to the site. Other utilities are available for extension. If this request is approved, the site should be replatted to provide individual lots for the duplex units, otherwise the site is a multi-family use that is not permitted by-right in the requested zoning. Half-street right-of-way for 45<sup>th</sup> Street at this location varies between 65 and 80 feet. Half-street right-of-way varies between 65 and 240 feet for the portions of Hillside Avenue and Highway K-254 adjacent to the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for “local commercial” uses. The designation reflects the site’s proximity to the intersection of K-254 Highway and Hillside, and was part of larger planned development.

**RECOMMENDATION:** Based upon the information available at the time the staff report was completed, it is recommended that the Falcon Falls Commercial CUP DP-283 be voided and the requested zone change from LC to TF-3 be approved, subject to replatting within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Immediately north and west of the application area is a drainage reserve that is zoned SF-5. North and west of the drainage reserve is a SF-5 zoned residential subdivision. East, across North Hillside Avenue, is an undeveloped SF-20 subdivision. South of the site, across K-254 Highway on unzoned right-of-way, is a KDOT maintenance yard. Further south is undeveloped LC and SF-5 zoned property.
2. The suitability of the subject property for the uses to which it has been restricted: As currently zoned, the site can be developed with uses permitted in the requested TF-3 district. However, lending institutions may refuse to offer residential interest rates for residences located in non-residential zoning districts or may not offer mortgages for residences located in non-residential zoning districts. Besides the mortgage question, if the existing CUP were to be left in place, a number of development requirements that are not normally associated with residential development would be present or required, such as: potential for incompatible LC uses to be legally located within the development that is being redirected to a residential development instead of office or commercial uses; masonry screening walls instead of wooden fencing, berms or landscaping; architectural compatibility; commercial or office signage that would not normally be found in a residential area or increased setbacks when compared to the TF-3 district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is significantly isolated from nearby properties by the 370-foot wide drainage reserve located to the north and west of the site, and the 120-foot wide street rights-of-way located to the east and south. Development of the site with duplex units should not detrimentally impact nearby property. The site has direct access to 45<sup>th</sup> Street and to Hillside Avenue. The site does not have a connection to the single-family homes located to the north of the drainage reserve.
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 will provide additional two-family dwellings to the city's inventory of housing. Denial would presumably cause a loss of economic opportunity to the applicant.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for "local commercial" uses. The designation reflects the site's proximity to the intersection of K-254 Highway and Hillside, and was part of larger planned development. As indicated above, the site's current LC zoning permits duplex development but with a higher development standard than is typically found in most residential developments. The request is in general conformance with adopted plans.
6. Impact of the proposed development on community facilities: Any needed improvements can be obtained during the replatting of the property; otherwise the site is served by the usual community facilities.

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

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

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

5. **Case No.: CUP2014-00009** - Kwik Shop, Inc. (owner); Professional Engineering Consultants c/o Isaac Krumme (agent) request a City amendment to CUP Community Unit Plan DP-261 to adjust boundary, allow a car wash, increase sign height and allow an LED sign on property described as:

That part of the N1/2 of Reserve "A", Eilerts Addition to Wichita, Sedgwick County, Kansas described as Beginning at the S.E. corner thereof; thence N89°57'56"W, along the South line of the N1/2 of said Reserve "A", 108.72 feet; thence N09°02'04"E, 17.00 feet; thence N18°02'04"E, 29.00 feet; thence N81°59'53"E, 97.99 feet to a point on the East line of said Reserve "A", said point being 58.07 feet North of the point of beginning; thence S00°02'09"E, 58.07 feet to the point of beginning.

AND

Lots 1 and 2, Block 2; Ann Walenta Commercial Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The LC Limited Commercial (LC) zoned site is located within DP-261, the Oliver Retail Center Community Unit Plan (CUP) at the southeast corner of Oliver and Kellogg. The applicant requests an amendment to DP-261 to include property at the hard corner which was previously not within the CUP boundaries; this property was purchased from a different owner. The amendment requests that a car wash be listed as a permitted use, that an LED sign be permitted along the Oliver frontage, and that a pole sign along the Kellogg frontage increase permitted size from 202 to 300 square feet and increase permitted height from 35 to 70 feet. See the applicant's attached CUP document with amendments, car wash site plan and sign graphics.

The Unified Zoning Code (UZC) permits car washes by right in LC zoning, but requires a conditional use if they are within 200 feet of residential zoning. Because the application area is within a CUP which does not specifically permit a car wash, a CUP amendment can be done in lieu of the conditional use. The proposed car wash location is within 70 feet of residential zoning measuring property line to property line across Glendale Ave.; the proposed car wash building is approximately 120 feet from the nearest residential zoning. The UZC supplementary use requirements for a car wash are: buildings shall be setback 35 feet from arterials, expressways or freeways; buildings shall meet established setbacks from other streets; structures shall be setback 60 feet from residential zoning; a screening fence is required when adjacent to a dwelling unit; all ground surfaces shall be paved; lighting, signage and noise shall meet UZC or other applicable code requirements. The submitted site plan appears to meet all requirements with the exception of a screening fence where adjacent to a residence.

The sign height amendment request (from 35 to 70 feet) is based on visibility from east and west bound Kellogg in time to exit at Oliver, see the attached graphics from the applicant. The applicant requested a 70-foot height, but demonstrated in their graphics a 60 and 50-foot height as well. Planning staff would note that along Kellogg, other sign height increases through variances, CUPs, PUDs and MAPC billboard reviews have been between 45 and 65 feet, and have been justified by visibility obstructions or

adjacent to elevated portions of Kellogg. The Sign Code would administratively permit signs to be elevated 20 feet above adjacent elevated highways; this portion of Kellogg is not elevated but is rather constructed below the Oliver Ave. roadway. Staff would also note that the applicant has the option to place a sign on the KDOT provided service signs prior to exits. The proposed 70-foot sign location, while adjacent to the Kellogg expressway, would be visible from nearby residential neighborhoods both north and south of Kellogg. No other sign in the immediate area exceeds 30 feet in height. The nearest sign to this location which received a height increase was approved for 55 feet, and was justified by an obstruction analysis.

Most of DP-261 is undeveloped; one vehicle repair building exists on the far west side of the CUP along the Kellogg frontage. North of the site is the Kellogg expressway and associated infrastructure, further north is a TF-3 Two-family Residential (TF-3) zoned neighborhood of single-family homes. South of the site is an LC zoned retail area and MF-29 Multi-family Residential (MF-29) zoned single-family homes. East of the site, across Glendale, is an LC zoned vehicle sales lot along the Kellogg frontage, an LC and GO General Office (GO) zoned multi-family development, and an MF-29 zoned neighborhood of single-family homes. West of the site, across Oliver, is the mostly vacant LC zoned DP-261, a TF-3 zoned neighborhood of single-family homes and an elementary school.

**CASE HISTORY:** The site has been zoned LC for some time. DP 261 was approved in 2002 and was expanded in 2008. A 2006 PUD request which included this site was not approved. The site was replatted as a portion of the Ann Walenta Commercial Addition in 2009.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, TF-3	Kellogg expressway, single-family residences
SOUTH:	LC, MF-29	Retail, single-family residences
EAST:	LC, GO, MF-29	Vehicle sales, multi and single-family residences
WEST:	LC, TF-3	Vacant, single-family residences, school

**PUBLIC SERVICES:** The site has one access point to Oliver and two access points to Glendale. All typical urban services are available.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “regional commercial.” The regional commercial designation is intended for commercial, office and personal service uses that have predominantly regional market areas and high volumes of retail traffic. 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.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request for an amendment to DP-261 to create increase boundaries, permit a car wash, permit an LED sign and increase a pole sign size from 202 to 300 square feet on Parcels F and G be **APPROVED**, with the below listed conditions. Planning Staff recommends that the request to increase a pole sign height from 35 to 70 feet be **DENIED**, and instead an amendment to increase the pole sign height to 50 feet be **APPROVED** subject to the following conditions:

- (1) General Provision #17 shall in addition state: “The car wash use shall conform to UZC Sec.III.D.6.f. and shall be subject to a staff approved site plan.”
- (2) General Provision #6.F. shall in addition state: “The LED sign shall conform to a staff approved elevation drawing.”
- (3) General Provision #6.J. shall allow one 50-foot pole sign along Kellogg with a non-flashing LED price sign display and shall conform to a staff approved elevation drawing.
- (4) The applicant shall submit four revised copies of the CUP and other required drawings to the Metropolitan Area Planning Department within 60 days of approval or the request shall be considered denied and closed.
- (5) If the Zoning Administrator finds that there is a violation of any of the conditions of the CUP amendment, 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 the CUP amendment null and void.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood: Most of DP-261 is undeveloped; one vehicle repair building exists on the far west side of the CUP along the Kellogg frontage. North of the site is the Kellogg expressway and associated infrastructure, further north is a TF-3 zoned neighborhood of single-family homes. South of the site is an LC zoned retail area and MF-29 zoned single-family homes. East of the site, across Glendale, is an LC zoned vehicle sales lot along the Kellogg frontage, an LC and GO zoned multi-family development, and an MF-29 zoned neighborhood of single-family homes. West of the site, across Oliver, is the mostly vacant LC zoned DP-261, a TF-3 zoned neighborhood of single-family homes and an elementary school. No other sign in the immediate area exceeds 30 feet in height, the nearest sign to this location which received a height increase was approved for 55 feet.
- (2) The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC with DP-261 use restrictions, which accommodates a wide range of commercial uses. The site could be developed with other uses permitted by right in LC zoning and permitted by the existing CUP. However, the site has remained undeveloped since the CUP was approved in 2002.
- (3) Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed amendment to allow a car wash and increased sign height and size could impact nearby residences, CUP improvements and requirements should mitigate this impact.
- (4) Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “regional commercial.” The regional commercial designation is intended for commercial, office and personal service uses that have predominantly regional market areas and high volumes of retail traffic. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

- (5) Impact of the proposed development on community facilities: The requested CUP amendment should have minimal impact on community facilities. Surrounding infrastructure was planned for and accommodates high volume traffic.

**JESS MCNEELY**, Planning Staff presented the Staff Report.

**ISAAC KRUMME, PROFESSIONAL ENGINEERING CONSULTANTS (PEC), 303 SOUTH TOPEKA, AGENT FOR THE APPLICANT** said the applicant is in agreement with staff comments. He briefly reviewed the original application for a 70-foot sign and showed a video developed by Ron's Sign Company which simulated a visual of the sign at 50-foot as you travel both east and west along Kellogg.

**FOSTER** asked if the applicant had investigated the cost of a sign identified along the roadway like the ones KDOT allows advertising food/gas, etc.

**KRUMME** said the applicant feels the type of sign request along the Kellogg corridor is important so potential clients can safely exit. He said the applicant likes the taller sign for this site and this situation.

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

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

**FOSTER** referred to the video and said no other signage in this area approaches this in height so it is outside the realm of aesthetics of the area. He said he would not be voting in favor of the application.

-----  
**MCKAY** said although he did not receive a public hearing notice on this item, he owns four pieces of property within one half block of the application area. He recused himself from the item and left the meeting.

**MCKAY** Out @2:25 p.m.

6. **Case No.: CON2014-00014** – Burning Barrel Artesan Ales, LLC, c/o Andy Boyd (applicant), Ferris Consulting, c/o Greg Ferris (agent) request a City Conditional Use to permit a Nightclub in the City (micro brewery with music and outdoor food and beverage service) in CBD Central Business District zoning within 300 feet of a park on property described as:

Lots 30 and 32, Fannie Avenue, Hyde's Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The application area, 156 S. Greenwood, is located at the northeast corner of East English and South Greenwood, one block southwest of the Douglas and Hydraulic intersection, in CBD Central Business District (CBD) zoning. The site is developed with a metal building and limited parking. The County Tax Assessor lists "warehouse-office combination" as the current land use. The applicant intends to develop a micro-brewery on the site with music and outdoor food and beverage service on a patio fronting South Greenwood. The applicant's plans (see attached) demonstrate indoor seating for 71 and outdoor seating for 24 patrons, brewery and kitchen space, and four alley accessed parking spaces (including one ADA space). The CBD zone has no parking requirements.

Nightclub in the City is defined by the Unified Zoning Code (UZC) as an establishment that provides entertainment and/or dancing, where alcoholic beverages are served and where food may or may not be served. The UZC permits a Nightclub in the City in the CBD zoning district by right, but requires a conditional use if the property is located within 300 feet of a church, park, school or residential zoning district. The application area is 65 feet from Hyde Park, measured property line to property line across South Greenwood, triggering the conditional use requirement. Four residential buildings are also within 300 feet of the site; the residential buildings are also zoned CBD and therefore do not trigger the conditional use requirement for a nightclub. A church exists south of Hyde Park but is not within 300 feet of the site.

All surrounding properties are also zoned CBD. A multi-family building is due north of the site, with two single-family residences and a warehouse further north. South of the site, across English, are a duplex and a funeral home with single and multi-family dwellings further south. East of the site, across an alley, are retail and office uses fronting Hydraulic. West of the site, across Greenwood, is Hyde Park, a printing facility and offices.

**CASE HISTORY:** The site was rezoned from LI Limited Industrial (LI) to CBD in 2005 in an area-wide CBD zoning expansion. The site was platted as Lots 30 and 32 of Hyde’s Addition in 1884.

**ADJACENT ZONING AND LAND USE:**

North: CBD	Multi-family residence, single-family residences, warehousing
South: CBD	Duplex, funeral home, single and multi-family residences
East: CBD	Retail, office
West: CBD	Park, printing, office

**PUBLIC SERVICES:** Greenwood and English are classified as local streets at this location, with a 65 and 75-foot right-of-way respectively. All other urban utilities and services are available.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for “employment/industry center” uses, and adjacent to areas designated “local commercial” to the north and east and areas designated “urban residential” to the south and west. The employment/industry center category encompasses areas with concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site is not within the Downtown Plan or other neighborhood plan areas.

The UZC states that “The purpose of the CBD is to accommodate retail, commercial, office and other complementary land uses within the downtown core area of the City of Wichita. The CBD district is generally compatible with the “Downtown Regional Center” designation of the Wichita-Sedgwick County Comprehensive Plan. It is intended for application only within the City of Wichita and only within the downtown core area and certain nearby areas being redeveloped with similar patterns of uses and site development standards such as but not limited to zero lot setbacks, shared parking, public streetscapes as landscaping and urban design elements and mixed uses within a building.”

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

- (1) The site shall be developed in conformance with the approved site plan.
- (2) No outside loudspeakers or outdoor entertainment is permitted.
- (3) Live music and outdoor service hours are limited to 10 pm Sunday through Thursday evenings and midnight on Friday and Saturday evenings.
- (4) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding properties are also zoned CBD. A multi-family building is due north of the site, with two single-family residences and a warehouse further north. South of the site, across English, are a duplex and a funeral home with single and multi-family dwellings further south. East of the site, across an alley, are retail and office uses fronting Hydraulic. West of the site, across Greenwood, is Hyde Park, a printing facility and offices.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned CBD and developed with a metal building, the site could continue to be used as zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is zoned CBD and could be developed with any range of permitted uses in that district. The proximity of Hyde Park triggers the conditional use review for a nightclub. Noise and activity from the micro-brewery could impact the park and surrounding residences. However, the limited size of the site will prevent expansion beyond a neighborhood scale, and proposed conditions should mitigate impacts on surrounding properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would presumably be an economic hardship upon the property owner, as the applicant owns the property and desires to operate the proposed business within the CBD.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for “employment/industry center” uses, and adjacent to areas designated “local commercial” to the north and east and areas designated “urban residential” to the south and west. The employment/industry center category encompasses areas with concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site is not within the Downtown Plan or other neighborhood plan areas.

The UZC states that “The purpose of the CBD is to accommodate retail, commercial, office and other complementary land uses within the downtown core area of the City of Wichita. The CBD district is generally compatible with the “Downtown Regional Center” designation of the Wichita-Sedgwick County Comprehensive Plan. It is intended for application only within the City of Wichita and only within the downtown core area and certain nearby areas being redeveloped with similar patterns of uses and site development standards such as but not limited to zero lot setbacks, shared parking, public streetscapes as landscaping and urban design elements and mixed uses within a building.”

6. Impact of the proposed development on community facilities: The proposed use will impact on-street parking within the surrounding area, as intended for CBD streets. The proposed Conditional Use should not impact community facilities to any greater extent other uses permitted in the CBD zoning district.

**JESS MCNEELY**, Planning Staff presented the Staff Report.

**J. JOHNSON** asked how long the area had been zoned Central Business District (CBD).

**MCNEELY** said since 2005. He said prior to that the area south of Douglas from Washington to Hydraulic was zoned Limited Industrial (LI) however; homeowners could not refinance or sell their homes because residential was not a permitted use in LI zoning. He said there was no significant opposition of the rezoning from LI to CBD when the area was rezoned.

**FOSTER** asked staff to review the site plan including the parking and screening requirements.

**MCNEELY** commented that there were no off-street parking requirements in CBD zoning. He noted that use of on street parking is generating some of the opposition to the application and added that park users use a lot of the on-street parking. He mentioned walk ability in CBD zoning. He added that there is no screening requirement in CDB zoning.

**DENNIS** mentioned traffic and said patrons of the nightclub will have to park somewhere.

**MCNEELY** noted that any other use allowed by right at the location would have no parking requirements as well. He said the applicants can manufacture and brew beer and open a restaurant that sells beer so staff feels the parking issue is a moot point.

**G. SHERMAN** referred to the site plan and noted the garage doors. He asked if the doors could be raised to accommodate a band inside the building.

**MCNEELY** noted that no outdoor speakers or amplified music was allowed. He said the Commission could include a condition that the doors not be opened and that no amplified or projected sound can leave the building.

**GREG FERRIS, 144 S. BAY COUNTRY COURT, AGENT FOR THE APPLICANT** said the garage doors will not be opened and there will be no outdoor entertainment. He said they concur with the Staff Report and agree with all conditions listed. He said they met with some of the neighbors and

as a result of that meeting have voluntarily included two additional conditions which were not allowing music after a certain time or outdoor service. He said they would abide by a condition that said the establishment would not be open any earlier than 10 a.m. any day and will close to the public at 10 p.m. Monday through Thursday, and Midnight Friday, Saturday and Sunday.

**FERRIS** said one of the items that attracted the owners to this site was the park and the idea that they could have a local, not highly trafficked facility and customers could enjoy the scenic environment. He said one of the items that is triggering the requirement for a conditional use (proximity to the park) is one of the items that drew the applicants to this location. He said because a regular restaurant could operate and serve liquor at this site, they believe the proposed use is a step down and will generate less traffic than a full service restaurant. He said the reason the nightclub rating is required is because the applicants want to provide entertainment inside the venue. He said this would be a “coffee shop” that serves the applicant’s micro brewed beer. He said the applicants have been brewing at the site for a number of years and have a loyal following. He said they thought a small facility, not like the large scale bars in Old Town, where people could come and enjoy the brews in a small, quaint atmosphere would be nice.

**FERRIS** said the second condition the applicants are willing to offer is that only beer and wine will be served and no distilled spirits will be allowed. He said an issue that arose at the neighborhood meeting was that the zoning goes with the land; however, the Planning Commission is aware that no bar is going to go into an area where no distilled spirits are allowed and the closing time is 10 p.m. or Midnight. He said the applicants’ goal is to create an atmosphere where friends, neighbors and other patrons can enjoy their home brewed beers on the premises with a “coffee shop” type atmosphere and music.

**FERRIS** concluded by saying that he believed that parking was not really a suitable topic for Planning Commission discussion since it is not part of the zoning regulations and issues surrounding the facility. He said they could operate tomorrow as a restaurant, drinking establishment with no requirement or conditions on parking, and no conditions on hours of operation other than normal business hours. He said the applicants are offering a much more restrictive facility than is currently allowed today at this location. He said they feel this conditional use is appropriate at this location. He mentioned that although it is not required, the applicants are investigating other parking options in the area because from a business standpoint they believe it is prudent. He said the applicants want to be good neighbors. He said the applicants are life-long friends, born and raised in Wichita and want to establish a facility that they can be proud of where people can come and enjoy their fine micro beer in a quaint environment with a little background music.

**DENNIS** commented that the fact the applicant added two additional requirements helped but he is concerned since the conditional use goes with the land. He referenced the “Golden Rules” and said the parking situation will have an impact on the neighboring properties and character of the neighborhood so he feels it is a valid issue for Planning Commission discussion.

**FERRIS** apologized if he was not clear. He said he understands parking has an impact on the neighborhood but he felt it was not an appropriate discussion because it is not part of the zoning district.

**FOSTER** asked about the height of the screening to the north.

**FERRIS** mentioned landscaping and a wrought iron fence and said the issue came up at the neighborhood meeting. He said some of the neighbors thought that a wrought iron fence might look better than an 8-foot screening fence.

**STEVE HARSHBARGER, CITY PRINT, 235 SOUTH ELLIS** said he has been in the area for 40 years right next to Hyde Park. Said he is dumfounded about what has happened in Old Town. He said corralling this type of industry into one spot seems to be raising a lot of negativity. He said he has invested a fortune in the building and in manufacturing his printing and reproduction business. He said he knows the neighborhood and mentioned that the church next to his business is devastated about what is going to happen to the neighborhood. He said the people are afraid. He said although he does not drink he does not object to what they are proposing, but he said the problem is much bigger. He said this will open up the gate to go even further. He mentioned doing a search on Bing entitled trouble in Old Town that turned up 40 pages of incidents involving the police. He said this area is somewhat isolated. He asked the Commission to protect the manufacturing in the area who have invested a lot of money.

**J. JOHNSON** asked what time of day or night the incidents happened in Old Town. He mentioned that most of the trouble occurs after Midnight.

**HARSHBARGER** said although he does not think this application will be any problem; he asked what will go next door to them and so on. He said Old Town grew like crazy. He said he pays his taxes and that no one has ever given him a dime. He said what he has comes from hard work.

**DAN VORST, 132 SOUTH GREENWOOD** said he has talked to a lot of people in the neighborhood and hasn't found one that wants this. He said he has four neighborhood concerns to talk about; namely, safety, parking, noise and other nuisances, and future use of the building. He said while they believe the applicants mean well and the neighbors appreciate their interest in investing in neighborhood, it is the type of business that bothers them. He mentioned the park and said it is a magnet for the children in the area and one of the reasons he moved there. He said there are generally around 20 kids on the street under the age of 12 who are allowed to go from home to the park with light supervision. He said that number goes way up when there is a function at the community center or church picnic. He said although there are businesses and manufacturing in the area, the park makes it feel like a small town neighborhood. He said bringing in a drinking establishment that will generate cars looking for parking, cars filled with people who have left the bar driving through the neighborhood changes the dynamics and feel of the neighborhood and makes it less inviting and less safe. He said children and drinking don't mix. He said parents feel they will no longer be able to let their children go to the park unaccompanied. He mentioned the Golden Rules, property values, noise and other nuisances and having music in a building 100 feet from his bedroom window, and 4 feet from the apartments next door. He said now the neighborhood is very quiet after 5:00 p.m. and that will change. He said as far as parking is concerned, he does not want someone parked on the street in front of his house 14 hours a day, 7 days a week. He asked that the applicants find dedicated parking and also asked if there was some way this property could no longer be a bar after the applicant's business moves or goes out of business.

**TAMMY O'DELL, PO BOX 158, ROSE HILL** said she owns the duplex at 1603-1605 East English across the street from the proposed nightclub. She referred to pictures she took at the park and the general area, church and playground on Easter morning. She said the proposed nightclub will be visible from every angle of the park. She said alcohol does not belong with the park and it is the park that gives

the neighborhood that family feel. She said this is no place for a bar, she said her renters will not be able to park on the street. She said there are plenty of other places for this type of operation all over town.

**LEON MATTER, 1047 WEST RIVER BOULEVARD** said he owns property in the neighborhood that he has renovated including buildings on South and North Hydraulic and properties along East Douglas, which include offices and residential units. He said they believe in the neighborhood and that it is “coming back”. He said he enthusiastically and whole heartedly supports the application. He said his experience with property values is that they go up when they are located in close proximity to entertainment.

**CARRIE ULRICH, 155 SOUTH HYDRAULIC** said her family owns the business directly east of the proposed nightclub. She said she has a number of concerns regarding the impact of this proposal on the children, citizens, businesses, neighbors and community who utilize the park and the park community facility. She mentioned the safety of the children, families, church groups and pedestrians who utilize the park, the community building and playground on a regular basis. She mentioned that the gatherings are often in the evenings and on weekends and draw anywhere from 100 to 150 people. She said this proposal will compromise safety in the area. She said parking in the area is scarce in addition to the increased traffic this will generate. She said there is nowhere for the patrons of this establishment to park. She said this proposed change in land use will be detrimental to the area. She said once this is designated as a nightclub it will always be a nightclub. She said she has never heard of a nightclub and/or bar compared to a coffee house in the same sentence. She said no matter what you call it; the sole purpose of the establishment is for the consumption of alcoholic beverages. She said this is not appropriate 65 feet away from where kids are playing and crossing the street. She said she does not feel that the conditions and restrictions will adequately address the problems of reclassifying this property. She said this proposal will cause a tremendous impact on the surrounding property owners and neighbors. She said her business will have to install cement blocks to keep unwanted traffic out of their parking lot because they are liable if they have to have a car towed. She said it will cost them approximately \$10,000 to have their lot fenced off. She said people are going to want to park as close as they can to the establishment. She said if this application is approved a lot of residences and businesses are going to leave the area which will impose a financial hardship on them and change the character of the neighborhood. She said this location is inappropriate and she does not believe a special permission should be granted to allow this use at this location. She said there is nothing community or family oriented in putting a bar a block away from an Alcoholic’s Anonymous Center, a church, Youth Horizon, Wichita Children’s Dance Theatre, residences and a park. She said this green area needs to be protected. She said the neighborhood should not have to suffer the consequences because the applicants chose a poor location. She concluded by imploring the Commission to consider the facts when they make their decision. She mentioned setting a precedent for the community and parks and that approval of this application will open up a “Pandora’s Box” that will compromise their safety, children and green areas.

**SHANE GROSS, 40044 EAST ENGLISH** said she is the owner of the Anchor and the Douglas Avenue Chop Shop. She said she lives on College Hill Park and she constantly has strangers parking in front of her house. She said she has parking lots with both of her businesses and is constantly sharing parking with other neighbors and businesses in the area. She said she is personally excited about the brewery opening up one half mile from her location. She said she wanted to focus on the positive impact this business will have on this location. She said she knows the applicants personally and their business model and code of ethics. She said they have a huge sense of community and family. She said

it is to their advantage to enhance the neighborhood. She implored the Commission to approve the application and allow the proposed business to open. She mentioned that the location is pedestrian and bicycle friendly. She mentioned buying local and the opportunity to purchase an artisanal, locally brewed beer in a family friendly location and neighborhood. She said she faced some of these same obstacles when she opened her business; however, she has been there 10 years because her zoning request was granted.

**MONICA FLYNN, EXECUTIVE DIRECTOR, WICHITA CHILDREN'S THEATRE AND DANCE CENTER, 201 LULU** said they have been at this location for over 23 years; that they love the peaceful neighborhood, centrally located and that it is a wonderful place for them. She said they have over 600-800 young people and their parents coming to the center per week. She said they frequently use the park between and during classes or after shows. She said she has known the applicant's family for years and knows they would never have any intent that wasn't honorable, but at the same time this quiet, lovely neighborhood could possibly change radically if this business is allowed in. She urged the Commission to consider that this was a family neighborhood. She concluded by saying that if the dance center were a school she was not sure this discussion would be taking place.

**GOOLSBY** commented that the dance center was approximately the same distance from the Abode and Lucky's Bar which both serve alcohol.

**FLYNN** said they had no issues with the businesses on the north side of Douglas.

**DAN \_\_\_\_\_, 113 ½ SOUTH HYDRAULIC** said he shares an alley with this building and lives on the block, as well as working at the intersection of Douglas and Hydraulic. He said he was present to support the business and believes it will be a great addition to the neighborhood.

**TONY JACOBS, 2722 EAST 101ST STREET, VALLEY CENTER** said he owns a business in Old Town at 151 N. Rock Island and is the architect for the applicant. He said he believes they are all sympathetic about the concerns about safety; however, they feel increasing pedestrian, bicycle and even vehicular traffic increases security from a property crime standpoint.

**GOOLSBY** noted that since Mr. Jacobs was architect for the project, his public speaking time fell under the time that was allotted to the applicant/agent.

**FERRIS** said one of the speakers addressed Old Town issues and that is why the applicants are looking at this type of environment versus Old Town. He said that is not the type of business model that they are projecting so they believe this case is an important distinction. He said safety is also important to the applicants and they will have security cameras in addition to traffic (folks coming and going) in the area which they feel will also help. He said they spoke to one of the neighbors who complained about drinking parties and that having more activity in the area may increase safety. He said as far as sound is concerned, the City does have a Noise Ordinance and if the applicants violate that they will also be in violation of the Conditional Use and a phone call will easily correct that. He said the applicants have no intention of providing loud music. He added that the applicants would be willing to pay to barricade the driveway to the parking lot adjacent to the location.

**MOTION:** To approve subject to staff recommendation with the additional conditions offered by the applicant regarding hours of operation and that only beer and wine be served at the venue.

**MITCHELL** moved, **B. JOHNSON** seconded the motion, and it failed (4-4). **DENNIS, FOSTER, MILLER STEVENS** and **G. SHERMAN** – No.

**FOSTER** asked staff to review CBD zoning uses and address the issue of solid screening versus wrought iron fencing.

**MCNEELY** said Mr. Ferris indicated that some of the neighbors were opposed to solid screening and seem to prefer wrought iron with landscaping. He added that the UZC does not require screening in CBD zoning and that is why staff had no recommendation.

**J. JOHNSON** asked if further discussion of the application was appropriate order of business since a vote had been taken or if the applicant should be advised to revise the application and resubmit.

**VANZANDT** commented that procedurally the discussion can be brought back to Commission even though the motion has failed. He said there could be a second motion with other contingencies.

**MILLER STEVENS** stated that she didn't think there were any conditions that would change her vote. She mentioned issues like parking and even though there is no requirement in CBD zoning, that doesn't mean the Commission doesn't need to consider it and the impact it will have on the neighborhood. She mentioned respect for the park and green space and how that serves the community. She added that parks are under attack all over the City. She mentioned the Golden Rules and said she does not believe this business fits with the neighborhood. She clarified that this was not an "anti-business vote".

**GOOLSBY** said he totally recognizes Commissioner Miller Stevens' feelings; however, he thinks this would make the micro brewery a more active presence in the neighborhood.

**G. SHERMAN** said he would be in favor of a neighborhood bar because he likes the idea; however, he believes 95 seats takes this proposal out of that realm. He said the main reason the case is before the Planning Commission is the park across street which he believes is important. He said they need a better location and if this proposal was located up on Douglas Avenue, he would be in favor of it.

**FOSTER** requested clarification that the applicants can open a microbrewery regardless of the decision on the Conditional Use application at today's meeting.

**MCNEELY** responded yes, a microbrewery is a permitted use by right in CBD zoning.

**B. JOHNSON** clarified that if food service was more than 50% of sales, the applicants could do what they are asking for today by right.

**MCNEELY** said that was correct. He said if the applicants had no live music and have a DER license which is 50% or more gross sales in food, that use would be permitted by right.

**B. JOHNSON** clarified that was why he voted to approve the conditional use with the additional requirements which are more restrictive than what is permitted by right.

- 
7. **Case No.: CON2014-00015** - Raw Investments, Inc. (owner), AT&T Mobility, Telecom Realty Consultants, LLC c/o Caroline Boyd (applicant-agent) request a County Conditional Use request for a wireless communication facility with a 150-foot monopole on LI Limited Industrial zoned property on property described as:

The South 435.31 feet of the East 300 feet of the Southeast Quarter of Section 14, Township 28 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas .

**BACKGROUND:** The applicant, AT&T Mobility, is seeking a Conditional Use to permit the construction of a 150-foot tall, wireless, galvanized steel, monopole tower within a 70-foot (x) 70-foot lease site on LI Limited Industrial zoned property. The lease site is located approximately 50 feet north of 47<sup>th</sup> Street South and 160 feet west of West Street. The site has access onto 47<sup>th</sup> Street South via a proposed access-utility easement. Because the site is located in Sedgwick County it is not designated on the “Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map, thus the Conditional Use Request. The LI zoning district allows, new undisguised ground-mounted wireless communication facilities of up to 150 feet in height.

The LI zoned Sedgwick County site is located on the northwest corner of 47<sup>th</sup> Street South and West Street. This is an area where Sedgwick County and the City of Wichita meet. The site is also located on the south end of a mass of LI zoned properties that run along West Street from Kellogg Avenue/US 54, on its north side, to 47<sup>th</sup> Street South. The LI zoned Sedgwick County Public Work’s West Yard abuts the west and north sides of the site. The Big Ditch (flood control) is located west of the County Yard and 47<sup>th</sup> Street South dead-ends at the Ditch. Undeveloped LI zoned property (located in the County) is located further north. Undeveloped LC zoned property (located in the County), a partially developed TF-3 Two-Family Residential zoned subdivision (located in Wichita) and a SF-20 Single-Family Residential zoned (located in the County) residence are located east of the site, across West Street. A partially developed SF-5 Single-Family Residential zoned subdivision (located in Wichita) is located further east of the site. Properties located south of the site, across 47<sup>th</sup> Street South, are all located in the County. These properties include an undeveloped GC General Commercial zoned property, a developed SF-20 zoned single-family residential subdivision, SF-20 zoned undeveloped land and single-family residences, a LC zoned single-family residence and the LC zoned Sexually Oriented Business, Pleasures.

The applicant’s RF Engineer has stated that the proposed facility is needed to provide coverage to an area that has minimal to low coverage. The applicant has provided current coverage and projected coverage maps showing the impact of the site in providing service to the area. The RF Engineer has provided a site selection map. There are three mentioned candidate sites, including the proposed site. One of the sites was rejected because it was located on the edge of the site search ring and it was zoned and developed as single-family residential. Another site’s (zoned LI) owner was difficult to contact and expressed little interest in leasing space for the communication facility. The one-mile site search ring showed no co-location opportunities.

The proposed tower and associated communication frequencies and wattages must meet standards determined by the Federal Aviation Administration (FAA) to insure it poses no hazard to air navigation

or interferes with other radio/communication frequencies; this must be provided to staff prior to building permits being issued. Tower lighting must meet the FAA requirements for aircraft warning. The proposed galvanized surface of the tower will blend into the sky more readily than a red or white paint, which meets the intent of the “Design Guidelines” of the “Wireless Communication Master Plan.” The proposed 150-foot tower will be designed for co-location for at least four (4) other providers. The proposed tower is shown with triangular antenna arrays.

**CASE HISTORY:** The four corners of the West Street – 47<sup>th</sup> Street intersection is shown as zoned Light Commercial on the 1958 County zoning map. This map reflects the zoning of County properties within a 3-mile ring of the City of Wichita.

**ADJACENT ZONING AND LAND USE:**

NORTH: LI	Undeveloped land, office warehouse
SOUTH: LC, GC, SF-20	Single-family residences, undeveloped land, sexually oriented business
EAST: LC, TF-3, SF-20, SF-5	Undeveloped land, duplexes, single-family residences
WEST: LI	Sedgwick County Public Work’s West Yard, the Big Ditch

**PUBLIC SERVICES:** No municipally supplied public services are required. The applicant will extend electrical service to the site. The site has a proposed access easement to 47<sup>th</sup> Street South, a paved two-lane local street at this location. The proposed wireless communication facility and its 150-foot tall tower will generate less traffic onto 47<sup>th</sup> Street South than the west, abutting Sedgwick County Public Work’s West Yard. The paved two-lane West Street is the closest (160 feet west of the site) arterial road to the site.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” depicts this location as being appropriate for “local commercial,” which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities. The UZC considers a wireless communication facility a commercial type of use. The site’s LI zoning is not appropriate for the local commercial category, but it is not out of character with the area’s zoning, which has a mass of LI zoned properties that run along West Street from Kellogg Avenue/US 54, on its north side, to 47<sup>th</sup> Street South. The local commercial designation reflects the site’s zoning as shown on the 1958 County zoning map.

Because the site is located in Sedgwick County it is not designated on the “Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map, thus the Conditional Use Request. The proposed site is located in Airport Hazard Zone C, which has a maximum height of 150 feet, which the proposed tower does not exceed.

The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. It states that all towers comply with the compatibility setback standards. The applicant’s site plan shows the tower meeting the compatibility setback standards. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area as much as possible. The proposed 150-foot monopole tower is the first tower in the area, but would not be out of character with the area’s LI zoning and either the current or permitted uses allowed in the LI zoning district. The proposed tower’s close proximity to the area’s residential development residential areas is supposed to

provide improved service to the AT&T's residential and nonresidential customers in this part of Sedgwick County; 2) Minimize the height, mass, or proportion. Making the tower shorter may lead to more towers that would be needed to provide the desired coverage; 3) Minimize the silhouette. Monopoles and certain lattice type structures (think City microwave towers) are recommended for up to 150-feet, with antennas mounted flush to the support structure over triangular antenna arrays. However, triangular antenna arrays tend to provide better coverage; 4) Use colors, textures, and materials that blend in with the existing environment. The monopole will have a galvanized surface, which will blend into the sky more readily than red or white paint; 5) Be concealed or disguised as a flagpole, clock tower, or church steeple. These design disguises were not mentioned in the application; 6) Be placed in areas where trees and/or buildings obscure some or all of the facility. The area's undeveloped land provides little opportunity to obscure the presences of a 150-foot tall monopole. Planting large evergreens and/or solid screening could provide cover from the ground up to 20-40 feet; 7) Be placed on walls or roofs of buildings. The one-mile site search ring showed no co-location opportunities; 8) Be screened through landscaping, walls, and/or fencing. Planting junipers/evergreens (a minimum of 5 feet tall at the planting, spaced 15 feet apart, center to center of each juniper/evergreen. This spacing will provide solid screening when the junipers/evergreens mature and with proper care provide a more attractive and efficient screening than a 6-8-foot tall wooden privacy fence; and 9) Painting towers red and white instead of using strobe lighting. The applicant has stated that there will be no strobes and that it will be a galvanized steel finish. NOTE: Since the time the Wireless Communication Master Plan was first adopted, the FAA changed their regulations to require daytime strobe lighting; whereas, when the plan was adopted, the FAA allowed painted towers red and white instead of using strobe lighting.

**RECOMMENDATION:** Based on the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

- A. This request must have the approval by the FAA in determining the proposed wireless communication facility with its 150-foot tall monopole tower pose no hazard to air navigation or interferes with other radio/communication frequencies. The applicant shall submit a current copy of FAA approval to the MAPD and the Code Enforcement Office prior to the issuance of a building permit.
- B. All requirements of Art. III Sec. III.D.6.g. of the Unified Zoning Code shall be met.
- C. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- D. The support structure shall be a monopole design, as shown on the elevation and that generally conforms to the approved site elevation and that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- E. The support structure shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four (4) wireless service providers.
- F. The tower site shall be developed in general conformance with the approved revised site and a landscape plan. These plans must show the type and size of fencing around the site, parking, all light poles, lights, power poles, cabinets, equipment or buildings within the fenced in site or in the immediate area if it is to be used by the site. The plan must identify existing and/or proposed trees and shrubs, give their total numbers and their general size to determine if it meets screening requirements of the Unified Zoning Code (UZC) Art. IV, Sec. IV-B.3.b.1. Evergreens will be planted a minimum size of 5-foot at the time of their planting, but be taller than 5-foot when mature and planted on 15-foot centers. The site plan must identify the all utility and or access easements. If

it is proposed it must be recorded. If a surface is needed for the drive/access easement, it must be approved by the Zoning Administrator. All improvements and construction of the facility/tower shall be completed within a year and before the facility becomes operational.

- G. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations. Provide the Sedgwick County Engineer with any required plans for review and approval of the site.
- 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 LI zoned Sedgwick County site is located on the northwest corner of 47<sup>th</sup> Street South and West Street. This is an area where Sedgwick County and the City of Wichita meet. The site is also located on the south end of a mass of LI zoned properties that run along West Street from Kellogg Avenue/US 54, on its north side, to 47<sup>th</sup> Street South. The LI zoned Sedgwick County Public Work's West Yard abuts the west and north sides of the site. The Big Ditch (flood control) is located west of the County Yard and 47<sup>th</sup> Street South dead-ends at the Ditch. Undeveloped LI zoned property (located in the County) is located further north. Undeveloped LC zoned property (located in the County), a partially developed TF-3 Two-Family Residential zoned subdivision (located in Wichita) and a SF-20 Single-Family Residential zoned (located in the County) residence are located east of the site, across West Street. A partially developed SF-5 Single-Family Residential zoned subdivision (located in Wichita) is located further east of the site. Properties located south of the site, across 47<sup>th</sup> Street South, are all located in the County. These properties include an undeveloped GC General Commercial zoned property, a developed SF-20 zoned single-family residential subdivision, SF-20 zoned undeveloped land and single-family residences, a LC zoned single-family residence and the LC zoned Sexually Oriented Business, Pleasures.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LI and is currently undeveloped. The site could be developed for many commercial, office-ware house and industrial uses by right. The LI zoning and the proposed tower are not/would not be out of character with the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed 150-foot tall, wireless, galvanized steel, monopole would be the first in the area. Its visual impact is undeniable, however the conditions of approval will add landscaping around the site, to help minimize the eye level visual impact. The area's residence will weigh the touted benefits of the proposed wireless communication facility and its 200-foot tall monopole tower against the site's visual impact.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility with its 150-foot tall tower is supposed to provide improved service to the AT&T's customers in this part of Sedgwick County. The UZC considers a wireless communication facility a commercial type of use.

Because the site is located in Sedgwick County it is not designated on the “Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map.” The proposed site is located outside of all Airport Hazard Zones and their maximum height restrictions.

The proposed site mostly conforms to the guidelines of the Wireless Communication Master Plan for locating wireless communication facilities. Although this will be the first tower in the area is not out of character with this area’s LI zoned properties and the current development or (in regards to the area’s undeveloped properties) the development that the LI zoning allows. The proposed tower’s proximity to the area’s residential development is no more intrusive than what is or can developed in the area’s LI Zoned properties. But the Wireless Plan anticipates that as more of the general population continues to use the services provided by these facilities, the location of wireless facilities in closer proximity to residential areas is probable. The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities.

5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed tower is not a hazard to air navigation (including the need or not for lighting) and that the tower does not interfere with other radio/communication frequencies.

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

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

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

8. **Case No.: CON2014-00016** - Kathleen Meyer (owner), AT&T Mobility, Telecom Realty Consultants, LLC, c/o Caroline Boyd (applicant-agent) request a County Conditional Use request for a wireless communication facility with a 200-foot monopole on RR Rural Residential zoned property on property described as:

Southeast Quarter of Section 11, Township 25 South, Range 2 West of the 6<sup>th</sup> P.M., except beginning at the Southeast corner of said Southeast Quarter; thence North along the East line 150 feet; thence West 290.40 feet on a line parallel to the South Section line to a point; thence South 150 feet to a point on the South Section line; thence East along the South line to the place of beginning.

**BACKGROUND:** The applicant, AT&T Mobility, is seeking a Conditional Use to permit the construction of a 200-foot tall, wireless, galvanized steel, monopole tower within a 100-foot (x) 100-foot lease site on RR Rural Residential zoned property. The lease site is located approximately 170 feet north of 109<sup>th</sup> Street North and 175 feet east of Raymond Drive. The site has access onto Raymond Drive via a 30-foot wide access-utility easement. Per the amended “Wireless Communication Facility Ordinance” (adopted by the WCC 4-08-08 & the BoCC 4-9-08, updated March 2011), new undisguised ground-mounted wireless communication facilities over 120 feet in height in the RR zoning district may be considered as a Conditional Use on a site by site analysis.

The RR zoned Sedgwick County site is located just east, across Raymond Drive, from the east side of the Bentley city limits. In Bentley, manufactured homes on urban scale lots are located along the west side of Raymond Drive facing the site and RR zoned agricultural fields. More recent development in this part of Bentley are partially developed (built 2004-2006) single-family subdivisions located northeast of the site. RR zoned agricultural fields are located north of the site. RR zoned agricultural fields and large tract single-family residences and farmsteads are located east and south of the site. A partially developed (built 2004-2010) SF-20 Single-Family Residential subdivision is also located south of the site.

The applicant's RF Engineer has stated that the proposed facility is needed to provide coverage to an area that has minimal to low coverage. The applicant has provided current coverage and projected coverage maps showing the impact of the site in providing service to the area. The RF Engineer has provided a site selection map. Most of the candidate sites, including the proposed site, are located on RR zoned agricultural land. However, the applicant has stated that co-location was submitted for the Bentley water tower and a newly built grain elevator (CON2012-00052). The applicant found the water tower not tall enough and the grain elevator was outside the 1-mile site search ring.

The proposed tower and associated communication frequencies and wattages must meet standards determined by the Federal Aviation Administration (FAA) to insure it poses no hazard to air navigation or interferes with other radio/communication frequencies; this must be provided to staff prior to building permits being issued. Tower lighting must meet the FAA requirements for aircraft warning. The proposed galvanized surface of the tower will blend into the sky more readily than a red or white paint, which meets the intent of the "Design Guidelines" of the "Wireless Communication Master Plan." The proposed 200-foot tower will be designed for co-location for at least four (4) other providers. The proposed tower is shown with triangular antenna arrays.

**CASE HISTORY:** The RR zoning district was essentially established with county-wide zoning in 1985; R Rural Residential (R) became RR Rural Residential in 1996, with the adoption of the Wichita-Sedgwick County Unified Zoning Code (UZC).

**ADJACENT ZONING AND LAND USE:**

NORTH: RR	Agricultural fields
SOUTH: RR, SF-20	Agricultural fields, large tract single-family residences
EAST: RR	Agricultural fields, large tract single-family residences
WEST: City of Bentley	Manufactured homes, single-family residences

**PUBLIC SERVICES:** No municipally supplied public services are required. The applicant will extend electrical service to the site. The site has a proposed access easement to Raymond Drive, a sand and gravel residential street located in the City of Bentley. The proposed wireless communication facility and its 200-foot tall tower will generate less traffic onto Raymond Drive than the area's single-family residences. 109<sup>th</sup> Street North is the closest (170 feet south of the site) arterial road to the site. 109<sup>th</sup> Street North is a paved, two-lane County Highway/Section Line Road at this location.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita and Small Cities 2030 Urban Growth Areas Map" depicts this site as being inside of the City of Bentley's (small city's) 2030 urban growth area, which indicates the reasonable direction and magnitude of growth that can be expected for the community. The proposed wireless communication facility with its 200-foot tall tower is supposed to

provide improved service to the AT&T's customers in this part of Sedgwick County. The UZC considers a wireless communication facility a commercial type of use.

The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. It states that all towers comply with the compatibility setback standards. The applicant's site plan shows the tower meeting the compatibility setback standards, as it is located entirely within the owner's 156.91-acre property. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area as much as possible. The proposed 200-foot monopole tower is the first tower in the Bentley area (a Guyed Tower can be seen north of the site, outside of the Bentley area) and as such is not in character with this area's predominate mix of farmland and large tract/lot single-family residential development. However, as more of the general population continues to use the services provided by these facilities, the location of wireless facilities in closer proximity to residential areas is anticipated; 2) Minimize the height, mass, or proportion. Making the tower shorter may lead to more towers to provide the desired coverage; 3) Minimize the silhouette. Monopoles and certain lattice type structures (think City microwave towers) are recommended for up to 150-feet, with antennas mounted flush to the support structure over triangular antenna arrays. However, triangular antenna arrays tend to provide better coverage; 4) Use colors, textures, and materials that blend in with the existing environment. The monopole will have a galvanized surface, which will blend into the sky more readily than red or white paint; 5) Be concealed or disguised as a flagpole, clock tower, or church steeple. These design disguises were not mentioned in the application; 6) Be placed in areas where trees and/or buildings obscure some or all of the facility. The area is open agricultural land and single-family residences, thus there is little opportunity to obscure the presences of a 200-foot tall monopole. Planting large evergreens and/or solid screening could provide cover from the ground up to 15-40 feet; 7) Be placed on walls or roofs of buildings. The applicant has stated that co-location submittals found the Bentley water tower too short and a newly built grain elevator outside the 1-mile site search ring; 8) Be screened through landscaping, walls, and/or fencing. Planting junipers/cedars a minimum of 5 feet tall at the planting, spaced 15 feet apart, center to center of each juniper. This spacing will provide solid screening when the junipers mature and with proper care provide a more attractive and efficient screening than a 6-8-foot tall wooden privacy fence; and 9) Painting towers red and white instead of using strobe lighting. The applicant has stated that there will be no strobes and that it will be a galvanized steel finish. NOTE: Since the time the Wireless Communication Master Plan was first adopted, the FAA changed their regulations to require daytime strobe lighting; whereas, when the plan was adopted, the FAA allowed painted towers red and white instead of using strobe lighting.

Because the site is located in Sedgwick County it is not designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map." The proposed site is located outside of all Airport Hazard Zones and their maximum height restrictions.

The site is located within the City of Bentley's Area of Zoning Influence (no comprehensive plan for Bentley was found) and as such the Bentley Planning Commission will consider CON2014-00016 at their April 22, 2014, meeting; UZC, Article V., Section V-B.4.d. If the Bentley Planning Commission recommends denial before the April 24, 2014, MAPC meeting and the MAPC recommends approval, CON2014-00016 will proceed to the Sedgwick County Board of County Commissioners (BoCC/Governing Body) for final action; UZC, Article V., Section V-D.6. It takes a unanimous vote all of the BoCC members to overturn the small city's recommendation of denial; UZC, Article V., Section V-D.9.

**RECOMMENDATION:** Based on the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

- I. This request must have the approval by the FAA in determining the proposed wireless communication facility with its 200-foot tall monopole tower pose no hazard to air navigation or interferes with other radio/communication frequencies. The applicant shall submit a current copy of FAA approval to the MAPD and the Code Enforcement Office prior to the issuance of a building permit.
- J. All requirements of Art. III Sec. III.D.6.g. of the Unified Zoning Code shall be met.
- K. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- L. The support structure shall be a monopole design, as shown on the elevation and that generally conforms to the approved site elevation and that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- M. The support structure shall not exceed 200 feet in height and shall be designed and constructed to accommodate communication equipment for at least four (4) wireless service providers.
- N. The tower site shall be developed in general conformance with the approved revised site and a landscape plan. These plans must show the type and size of fencing around the site, parking, all light poles, lights, power poles, cabinets, equipment or buildings within the fenced in site or in the immediate area if it is to be used by the site. The plan must identify existing and/or proposed trees and shrubs, give their total numbers and their general size to determine if it meets screening requirements of the Unified Zoning Code (UZC) Art. IV, Sec. IV-B.3.b.1. Evergreens will be planted a minimum size of 5-foot at the time of their planting, but be 15-40-foot when mature and planted on 15-foot centers. The site plan must identify and record all utility and or access easements. If a surface is needed for the drive/access easement, it must be approved by the Zoning Administrator. All improvements and construction of the facility/tower shall be completed within a year and before the facility becomes operational.
- O. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations. Provide the Sedgwick County Engineer with any required plans for review and approval of the site.
- P. 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 RR zoned Sedgwick County site is located just east, across Raymond Drive, from the east side of the Bentley city limits. In Bentley, manufactured homes on urban scale lots are located along the west side of Raymond Drive facing the site and RR zoned agricultural fields. More recent development in this part of Bentley are partially developed (built 2004-2006) single-family subdivisions located northeast of the site. RR zoned agricultural fields are located north of the site. RR zoned agricultural fields and large tract single-family residences and farmsteads are located east and south of the site. A partially developed (built 2004-2010) SF-20 subdivision is also located south of the site.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR and is currently used as farmland. The site could continue to be used as farmland by right or developed as single-family residential with a minimum lot size of two-acres if served by a septic system or 4.5-acres if served by a lagoon, depending on perc test on the soil.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed 200-foot tall, wireless, galvanized steel, monopole would be the first in the area. Its visual impact is undeniable, however the conditions of approval will add landscaping around the site, to help minimize the eye level visual impact. The area's residence will weigh the touted benefits of the proposed wireless communication facility and its 200-foot tall monopole tower against the site's visual impact.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Wichita and Small Cities 2030 Urban Growth Areas Map" depicts this site as being inside of the City of Bentley's (small city's) 2030 urban growth area, which indicates the reasonable direction and magnitude of growth that can be expected for the community. The proposed wireless communication facility with its 200-foot tall tower is supposed to provide improved service to the AT&T's customers in this part of Sedgwick County. The UZC considers a wireless communication facility a commercial type of use.

Because the site is located in Sedgwick County it is not designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map." The proposed site is located outside of all Airport Hazard Zones and their maximum height restrictions.

The site is located within the City of Bentley's Area of Zoning Influence and as such the Bentley Planning Commission will consider CON2014-00016 at their April 22, 2014, meeting; UZC, Article V., Section V-B.4.d. If the Bentley Planning Commission recommends denial before the April 24, 2014, MAPC meeting and the MAPC recommends approval, CON2014-00016 will proceed to the Sedgwick County Board of County Commissioners (BoCC/Governing Body) for final action; UZC, Article V., Section V-D.6. It takes a unanimous vote all of the BoCC members to overturn the small city's recommendation of denial; UZC, Article V., Section V-D.9.

The proposed site mostly conforms to the guidelines of the Wireless Communication Master Plan for locating wireless communication facilities. However, this will be the first tower in the Bentley area (a Guyed Tower can be seen north of the site, outside of the Bentley area) and as such is not in character with this area's predominate mix of farmland and large tract/lot single-family residential development. But the Wireless Plan anticipates that as more of the general population continues to use the services provided by these facilities, the location of wireless facilities in closer proximity to residential areas is probable. The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities.

5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed tower is not a hazard to air navigation (including the need or not for lighting) and that the tower does not interfere with other radio/communication frequencies.

**BILL LONGNECKER**, Planning Staff presented the Staff Report. He reported that the Bentley Planning Commission approved the application 2-1. He said there were concerns expressed about drainage onto Raymond Drive and further south and the visual impact of the cell tower on homes in the area. He said he believes one of the Bentley Planning Commissioners was present to speak on the item.

**CAROLINE BOYD, TELECOM REALTY CONSULTANTS, 3864 WEST 38<sup>TH</sup> STREET, PRAIRIE VILLAGE, KANSAS, AGENT FOR THE APPLICANT** indicated she was present at the City of Bentley Planning Commission Meeting where a couple of people expressed concerns about the tower and current drainage issues. She said part of the application submission was providing a run-off study to Sedgwick County. She indicated that this site is to provide coverage for the City of Bentley. She referred to the red areas of the coverage map. She indicated that the red splotches depicted existing towers and other colors such as blue, yellow and green depicted areas where there was little to no coverage. She said they tried to locate the tower where it would address the coverage issue and decided that the edge of town was the most viable option from a leasing and construction point of view. She said they are proposing landscaping and fencing to block the base of the cell tower and help with the visual aesthetics. She concluded by requesting that the Planning Commission recommend approval of the tower.

**MITCHELL** clarified that they would submit a drainage plan to County Engineering and that approval of this application was contingent upon that approval.

**BOYD** reiterated that the applicant is required to submit a drainage plan to the County prior to obtaining a building permit.

**STEVE JONES, BENTLEY CITY PLANNING COMMISSION, PO BOX 9, BENTLEY** said the drainage in the area along Raymond Road has never been right and the water comes from the north, drains south and backs up. He mentioned the new housing development to the north; that the contractor went bankrupt; and that they are having a hard time selling lots because it is so far out. He also mentioned that the application may negatively affect property values in the area.

**DENNIS** noted that the site is 156 acres and wondered what impact a 100 x 100 foot building would have on the drainage issues.

**JONES** mentioned aesthetics in the area and the negative effect the tower could have on home sales and tax values. He said drainage was another issue.

**FOSTER** mentioned that a portion of the application extends to Raymond Drive. He asked about the possibility of a culvert method to take the drainage south.

**JONES** said the drainage currently flows south to 109<sup>th</sup> Street and that there is a shallow ditch along Raymond Drive, but they have a hard time keeping the little ditch cleaned out.

**J. JOHNSON** clarified the area was farmland before houses were built?

**JONES** responded yes.

**BOYD** said they can't really address the drainage issues associated with the new development and platting for that; however, she reiterated that the applicant is required to submit a drainage plan for their site which may or may not help the current drainage situation.

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

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

-----  
**NON-PUBLIC HEARING ITEMS**

Other Matters/Adjournment

The Metropolitan Area Planning Commission adjourned at 3:35 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