

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

MINUTES

June 19, 2014

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, June 19, 2014 at 1:37 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Don Klausmeyer, Chair; Matt Goolsby; Vice Chair; David Foster (In @1:34 p.m.); Bill Johnson; Joe Johnson; John McKay Jr.; M.S. Mitchell; Bill Ramsey; Don Sherman and George Sherman. David Dennis; Carol Neugent; Debra Miller Stevens; and Chuck Warren were absent. Staff members present were: 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 May 22, 2014 MAPC meeting minutes.

MOTION: To approve the May 22, 2014 meeting minutes, as amended.

J. JOHNSON moved, **GOOLSBY** seconded the motion, and it carried (5-0-4).
MCKAY, MITCHELL, G. SHERMAN and **WARREN** - Abstained.

Approval of the June 5, 2014 MAPC meeting minutes.

MOTION: To approve the June 5, 2014 meeting minutes, as amended.

GOOLSBY moved, **G. SHERMAN** seconded the motion, and it carried (6-0-3).
J. JOHNSON, RAMSEY and **WARREN** - Abstained.

***FOSTER** (In @1:34 p.m.)

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

There were no Subdivision cases.

3. **PUBLIC HEARING – VACATION ITEMS**

- 3-1. **VAC2014-00018: City request to vacate a portion of platted street right-of-way, platted setback, and platted access control**, located next to properties located west of Amidon Avenue, south of 33rd Street North, on the north side of the Carlock - McLean Avenues intersection.

OWNER/APPLICANT: David & Heather Smith Rusty & Lora Good (owners/applicants)

LEGAL DESCRIPTION: Generally described as vacating that portion of the platted McLean Avenue street right-of-way located between the northwest lot lines of Lot 8, Block 4, Pierpoint Acres Addition & Lot 1, Ladene Addition, the Wichita-Valley Center Floodway (Big Ditch), Chisholm Creek

Diversion, north of its intersection with Carlock Avenue, and dead-ending at an unplatted tract on its north end, a platted 30-foot setback on Lot 8, Block 4, Pierpoint Acres Addition & the platted complete access control on Lot 1, Ladene Addition all in Wichita, Sedgwick County, Kansas.

LOCATION:

Generally located south of 33rd Street North, west of Amidon Avenue, on the north side of the McLean – Carlock Avenues intersection (WCC #VI)

REASON FOR REQUEST:

No plans to extend or improve this dead-end unimproved portion of McLean Avenue

CURRENT ZONING:

The site is dead-end, unimproved street right-of-way. All abutting and adjacent southern, northern and eastern properties are zoned SF-5 Single-Family Residential (SF-5). The western property is the Big Ditch flood control.

The applicants propose to vacate: that portion of the platted McLean Avenue street right-of-way located between the northwest lot lines of Lot 8, Block 4, Pierpoint Acres Addition & Lot 1, Ladene Addition*, the Wichita-Valley Center Floodway (Big Ditch), Chisholm Creek Diversion, north of its intersection with Carlock Avenue, and dead-ending at an unplatted tract on its north end, and; a platted 30-foot setback on Lot 8, Block 4, Pierpoint Acres Addition, and; the platted complete access control (to McLean Avenue) on Lot 1, Ladene Addition. There are no public utilities located in the described portion of McLean Avenue. Stormwater and Traffic have reviewed and approved the request. The applicants have provided a copy of a stamped survey of the right-of-way, as requested by the Subdivision Committee. Westar has a light pole in the area of the vacation, the southeast corner of McLean and Carlock Avenues. The Ladene Addition was recorded with the Register of Deeds August 26, 1975. The Pierpoint Acres Addition was recorded with the Register of Deeds December 7, 1953.

*NOTE: At their May 13, 2014, meeting the City Council approved VAC2014-00002, a request to vacate a platted sanitary sewer easement and a platted setback located on Lot 1, Ladene Addition.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time may 29, 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 platted street right-of-way, the platted setback and platted complete access control, and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Provide covenants binding and tying the vacated portions of McLean Boulevard to the abutting Lot 8, Block 4, Pierpoint Acres Addition & Lot 1, Ladene Addition. This covenant, with the applicants' original signatures shall be provided to the Planning Department prior to this case going to City Council for final action. These covenants will go with the Vacation Order to the Register of Deeds for recording.
- (2) Abandonment or relocation/reconstruction of any/all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. Westar has a street light on the southeast corner of McLean Boulevard and Carlock Street that may be in the area of the proposed vacation. Either retain that portion of the right-of-way or remove/relocate the street light at the applicants' expense. Marsha Jesse is the Area Rep and can be reached at 261-6734 about this request.
- (3) Provide any needed easements for relocated utilities, prior to this case going to City Council for final action.
- (4) Provide Planning with a legal description of the vacated portion of platted street right-of-way, the platted setback and platted access control on a Word document, via e-mail. These legal descriptions will be used on the Vacation Order. The legal descriptions must be provided to Planning prior to this case going to City Council for final action.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide covenants binding and tying the vacated portions of McLean Boulevard to the abutting Lot 8, Block 4, Pierpoint Acres Addition & Lot 1, Ladene Addition. This covenant, with the applicants' original signatures shall be provided to the Planning Department prior to this case going to City Council for final action. These covenants will go with the Vacation Order to the Register of Deeds for recording.

2. Abandonment or relocation/reconstruction of any/all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. Westar has a street light on the northeast corner of McLean Boulevard and Carlock Street that may be in the area of the proposed vacation. Either retain that portion of the right-of-way or remove/relocate the street light at the applicants' expense. Marsha Jesse is the Area Rep and can be reached at 261-6734 about this request.
3. Provide any needed easements for relocated utilities, prior to this case going to City Council for final action.
4. Provide Planning with a legal description of the vacated portion of platted street right-of-way, the platted setback and platted access control on a Word document, via e-mail. These legal descriptions will be used on the Vacation Order. The legal descriptions must be provided to Planning prior to this case going to City Council for final action.
5. 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.

B. JOHNSON moved, **MCKAY** seconded the motion, and it carried (10-0).

PUBLIC HEARINGS

4. **Case No.: CON2014-00018 (Deferred from 6-5-14)** - Michael Tracy (applicant/owner) requests a County Conditional Use request for a temporary accessory apartment (for medical reasons) on SF-20 Single-family Residential zoned property on property described as:

BACKGROUND: The applicant is requesting a Conditional Use for a temporary manufactured home/accessory apartment (temporary accessory apartment), specifically a single-wide manufactured home, to assist with the care of elderly family members with medical needs. The applicant has provided an attached letter from a physician testifying to the medical needs of the applicant's brother who will be occupying the temporary accessory apartment; Exhibit A. The applicant has also provided an attached statement giving his reason for requesting the temporary accessory apartment in regards to the health of the brother ('disabled family member') and his mother; Exhibit B. The platted 1.53-acre SF-20 Single-Family Residential (SF-20) zoned subject site is located south of 83rd Street South, two blocks west of Broadway Avenue, on the northwest corner of Nicole and Katherine Streets. The Sedgwick County site is located within Haysville's Zoning Area of Influence.

Per the Unified Zoning Code (UZC, Sec.III-D.6.1.(3)), the placement of an accessory manufactured home on a residentially zoned lot located within the unincorporated portion of Sedgwick County may be

permitted on a temporary basis, as a Conditional Use in accordance with the UZC, Sec.V-D (required review procedures for a Conditional Use), subject to the following conditions and requirements.

- (a) The location of the manufactured home shall conform to all Setback requirements of the zoning district in which located.
- (b) The lot area for the manufactured home need not comply with the area requirements of the zoning district, provided that the unit is connected to a public water supply and a municipal-type sewer system. If the property is not served by a public water supply and municipal type sewer system, the minimum lot area shall be determined by the County Health Department.
- (c) The unit shall comply with all of the standards of the UZC, Secs.III-D.6.1(1) and III-D.6.1(2); manufactured homes in the County, Standards and Exceptions.
- (d) The applicant shall show due cause that hardship exists and that the hardship cannot reasonably be alleviated without the granting of the Conditional Use.
- (e) The Planning Commission shall determine a reasonable time limit for each individual case. The manufactured home shall be removed from the property within 90 days after any change in the circumstances used as a basis for the Conditional Use.

The applicant owns the subject site as well as the abutting north property; Lot 1, Block F, Cain Orchard 2nd Addition and Lot 17, Kirby Addition. The applicant's mother lives on the abutting north property. In 2013 a garage was built on the subject site. Common ownership of the above abutting lots allowed the construction of the garage on the subject site as an accessory structure to the single-family residence located on the abutting north property. The common ownership allows the consideration of the Conditional Use request. The applicant's site plan is an aerial with the footprint of a 'single wide' manufactured home of undetermined size.

The County subject site is located in an SF-20 zoned single-family residential neighborhood with lots ranging from +/- a half-acre to an acre and a half. It is not unusual to see small stables with horses in the neighborhood. The immediate single-family residential neighborhood is developed with a mix of predominately residential designed manufactured homes and stick frame houses (built late 1940s-1960s). All the abutting and closest adjacent properties are developed with residential designed manufactured homes. RR Rural Residential zoned agricultural lands are located approximately 390 feet west and 2,000 feet east (across Broadway Avenue) of the subject site.

CASE HISTORY: The subject site, developed with a garage, is Lot 1, Block F, Cain Orchard 2nd Addition. The Cain Orchard 2nd Addition was recorded with the Sedgwick County Register of Deeds March 8, 1982. The abutting north property, developed with a residential designed manufactured home, is Lot 17, Kirby Addition. The Kirby Addition was recorded with the Sedgwick County Register of Deeds July 21, 1955.

This case was considered at the May 22, 2014, Haysville Planning Commission meeting and was approved with six conditions. There were no protests at the Haysville Planning Commission meeting.

ADJACENT ZONING AND LAND USE:

NORTH: SF-20	Single-family residences
SOUTH: SF-20	Single-family residences
WEST: SF-20	Single-family residences
EAST: SF-20	Single-family residences

PUBLIC SERVICES: Nicole and Katherine Streets are dirt and gravel residential streets. The nearest access to a paved road is Broadway Avenue, located approximately 1,920 feet east of the subject site. Broadway Avenue is a two-lane arterial at this location. The single-family residence located on the abutting north property is served by a lagoon for sewage and a well for water; it is outside of all Rural Water Districts. All other utilities are available.

CONFORMANCE TO PLANS/POLICIES: The “2030 Land Use Guide of the Comprehensive Plan” (Plan) identifies the SF-20 zoned site as being in the Haysville (Small City) 2030 Urban Growth Area. The Small City Urban Growth Area indicates the reasonable direction of the small cities’ growth. The site’s SF-20 zoning is a reflection of much of the existing single-family residential development that was in place prior to the 1984 establishment of County wide zoning. The SF-20 zoning district allows single-family residential use. A Conditional Use application/request is required for consideration of a temporary accessory apartment in the SF-20 zoning district. A Conditional Use for a temporary accessory apartment in the SF-20 zoning district has supplemental conditions that are required.

The August 2012, “Haysville Comprehensive Plan’s Land Use Plan Map” shows the site as “Residential.” There is no specific language defining Residential in the Haysville Comprehensive Plan, although there is a page identifying suburban development in Haysville’s Planning Area. Suburban development is referenced as platted lots or tracts ranging in size from one (1) to 20-acres and notes their potential impact on future urban growth patterns and the possibility of removing prime agricultural land. The proposed temporary accessory apartment would not seem to be in conflict with the Haysville’s Residential category. The site and the area around it are located within a FEMA Flood Zone.

The site is located within the Haysville’s Zoning Area of Influence and as such the Haysville Planning Commission will consider CON2014-00018 at prior to the June 5, 2014 MAPC meeting; UZC, Sec. V-B.4.d. If the Haysville Planning Commission recommends denial before the June 5, 2014, MAPC meeting and the MAPC recommends approval, CON2014-00018 will proceed to the Sedgwick County Board of County Commissioners (BoCC/Governing Body) for final action; UZC, Sec. V-D.6. It takes a unanimous vote of all of the BoCC members to overturn the small city’s recommendation of denial; UZC, Sec. V-D.9. If the Haysville Planning Commission recommends approval and the MAPC recommends denial of the request, the applicant may appeal the MAPC’s denial to the BoCC. A two-thirds majority of the BoCC is required to overturn the MAPC’s recommendation.

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

- (1) The temporary accessory apartment (a single-wide manufactured home located on Lot 1, Block F, Cain Orchard 2nd Addition) shall remain accessory to and under the same ownership as the principal single-family residence (located on Lot 17, Kirby Addition) and the ownership shall not be divided or sold as a condominium. Provided a covenant, with original signatures, binding and tying Lot 1, Block F, Cain Orchard 2nd Addition and Lot 17, Kirby Addition until they are replatted as one lot or the temporary accessory apartment is removed. This must be provided to Panning for recording with the Sedgwick County Register of Deeds.
- (2) The temporary accessory apartment shall remain on the site (Lot 1, Block F, Cain Orchard 2nd Addition) as a temporary accessory dwelling for the (Charles Tracy) and/or the applicant’s elderly mother as long as the disabled uncle and/or the elderly mother resides in either the site

(Lot 1, Block F, Cain Orchard 2nd Addition) and/or the abutting north property (Lot 17, Kirby Addition. The applicant shall report to the Metropolitan Area Building and Construction Department (MABCD) on a yearly basis, every January, the status of the occupancy of this temporary single-wide manufactured home. The temporary single-wide manufactured home shall be removed from the property within 90 days after any change in the circumstances used as a basis for the Conditional Use.

- (3) The water and sewer service provided to the temporary accessory apartment shall not be provided as separate services from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services. The applicant shall have the MABCD review the status of the existing sewer septic system (located on Lot 17, Kirby Addition) prior to the hook up of the proposed temporary accessory apartment (located on Lot 1, Block F, Cain Orchard 2nd Addition).
- (4) The applicant shall obtain all applicable permits including, but not limited to: building, health and zoning. This will include turning in plans for review and approval by the MABCD for the placing of the temporary accessory apartment within the FEMA Flood Zone.
- (5) Development and maintenance of the site shall be in conformance with the approved site plan.
- (6) If the temporary accessory apartment is not in place within six (6) months of approval, or 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 County subject site is located in an SF-20 zoned single-family residential neighborhood with lots ranging from +/- a half-acre to an acre and a half. It is not unusual to see small stables with horses in the neighborhood. The immediate single-family residential neighborhood is developed with a mix of predominately residential designed manufactured homes and stick frame houses (built late 1940s-1960s). All the abutting and closest adjacent properties are developed with residential designed manufactured homes. RR Rural Residential zoned agricultural lands are located approximately 390 feet west and 2,000 feet east (across Broadway Avenue) of the subject site.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The vacant subject site is currently zoned SF-20. The SF-20 zoning permits a single-family residence. The proposed temporary manufactured home/accessory apartment requires approval of a Conditional Use
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** This appears to be the first request for a temporary manufactured home/accessory apartment in this neighborhood. The proposed temporary manufactured home/accessory apartment is a single-wide manufactured home, of an undermined size. The proposed temporary manufactured home/accessory apartment will not be on the same lot as the principle residence, as required by

the UZC; Lot 1, Block F, Cain Orchard 2nd Addition and Lot 17, Kirby Addition. However, County Law has opined that the applicant's ownership of both of the (abutting) lots, allows the consideration of the Conditional Use request. The UZC requires that water sewer for the proposed temporary manufactured home/accessory apartment on the same line as the principle residence, which makes it harder to sell the temporary manufactured home/accessory apartment as a separate unit. Staff's recommendation of the applicant providing a covenant, with original signatures, binding and tying Lot 1, Block F, Cain Orchard 2nd Addition and Lot 17, Kirby Addition until they are replatted as one lot or the temporary manufactured home/accessory apartment is removed, further insures the that the two living units remain under one ownership.

- (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 could impose a hardship on the owner of the properties in regards to helping provide medical care for elderly family members suffering from declining health.
- (5) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2030 Land Use Guide of the Comprehensive Plan" (Plan) identifies the SF-20 zoned site as being in the Haysville (Small City) 2030 Urban Growth Area. The Small City Urban Growth Area indicates the reasonable direction of the small cities' growth. The site's SF-20 zoning is a reflection of much of the existing single-family residential development that was in place prior to the 1984 establishment of County wide zoning. The SF-20 zoning district allows single-family residential use. A Conditional Use application/request is required for consideration of a temporary accessory apartment in the SF-20 zoning district. A Conditional Use for a temporary accessory apartment in the SF-20 zoning district has supplemental conditions that are required.

The August 2012, "Haysville Comprehensive Plan's Land Use Plan Map" shows the site as "Residential." There is no specific language defining Residential in the Haysville Comprehensive Plan, although there is a page identifying suburban development in Haysville's Planning Area. Suburban development is referenced as platted lots or tracts ranging in size from one (1) to 20-acres and notes their potential impact on future urban growth patterns and the possibility of removing prime agricultural land. The proposed temporary accessory apartment would not seem to be in conflict with the Haysville's Residential category. The site and the area around it are located within a FEMA Flood Zone. This requires review and approval by the MABCD for the placing of the temporary accessory apartment within the FEMA Flood Zone

The site is located within the Haysville's Zoning Area of Influence and as such the Haysville Planning Commission did consider CON2014-00018 prior to the June 5, 2014 MAPC meeting; UZC,Sec.V-B.4.d

- (6) **Impact of the proposed development on community facilities:** Community facilities are the public streets in the neighborhood, police and fire services, none of which will be noticeably impacted by another residence being built on the site. There is no public water or sewer service available to the neighborhood.

BILL LONGNECKER, Planning Staff presented the Staff Report. He reported that there were no protests on the case and conditions reflected what was approved by the City of Haysville.

MOTION: To approve subject to staff recommendation.

G. SHERMAN moved, **WARREN** seconded the motion, and it carried (10-0).

5. **Case No.: ZON2014-00009** – Digital Office Systems, LLC, c/o Kenneth Brasted (Applicant/owner) and Edward Murabito (agent) request a City zone change request from LC Limited Commercial to OW Office Warehouse on property described as:

Lots 193 and 195, Burr’s 2nd Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting OW Office-Warehouse (OW) zoning on the platted approximately 0.47-acre LC Limited Commercial (LC) zoned site. The north portion of the site has a small office building (672-square feet) on it, with the rest of the site mostly developed as an unused parking lot. Per the attached letter, the applicant proposes to build a warehouse to receive and store shipments of equipment that they then deliver to different businesses in the area. The applicant’s LC Limited Commercial (LC) and GO General Office (GO) zoned office is located east of the subject site, across Hydraulic Avenue. Currently the applicant stores their office equipment in rented storage units located five blocks north (across Kellogg Avenue/US Highway 54) of their office. The applicant has stated that the delivery of the office equipment to the subject site will be made by box trucks during normal business hours and that no machinery is needed. The OW zoning district allows warehousing activities for businesses with operating characteristics that do not require highly visible locations or the type of vehicular access needed for retail and high intensity office development.

With the exception of the applicant’s LC and GO zoned office and LC zoned subject site, the surrounding neighborhood consist of B Multi-Family Residential (B) zoned single-family residences, scattered duplexes and small multi-family residences (built 1910-1940s). Kellogg Avenue/US Highway 54 separates the north side of the applicant’s properties and the neighborhood from a neighborhood of GC General Commercial (GC) and LC zoned businesses.

CASE HISTORY: The site consist of Lots 193 and 195, Burr’s 2nd Addition and Lot 1, Pennypower 2nd Addition. The Burr’s 2nd Addition was recorded with the Sedgwick County Register of Deeds May 13, 1886. The Pennypower 2nd Addition was recorded with the Sedgwick County Register of Deeds January 11, 1979.

ADJACENT ZONING AND LAND USE:

NORTH:	Kellogg/US 54, GC, LC	Kellogg Avenue/US Highway 54, office-warehouse, strip retail
SOUTH:	B	Duplexes, single-family residences
WEST:	B	Single-family residences, duplexes, vacant house
EAST:	LC, GO, B	Office, single-family residences, duplexes, four-plex

PUBLIC SERVICES: The site has two drives onto Hydraulic Avenue, one off of the Burr’s 2nd Addition, which is a pre-automobile plat (recorded 1886) with 25-foot wide lots and the other off of the Pennypower 2nd Addition. The site also has a drive onto Orme Street, a paved residential street, off of the Pennypower 2nd Addition. The Pennypower plat does not show or describe access control onto Orme Street. Hydraulic Avenue is a paved two-lane arterial road, with a center turn lane at this location.

Hydraulic Avenue has 50 feet of half-street right-of-way, with the exception of the north end of the subject site, which has 40 feet of half-street right-of-way. All utilities are available to the site

CONFORMANCE TO PLANS/POLICIES: The “2013 Land Use Guide of the Comprehensive Plan” (2013-Plan) identifies the LC zoned subject site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality. The subject site’s LC zoning and its proposed OW zoning are not compatible with the urban residential category. The OW District is generally compatible with the "employment/industry center" designation of the 2013-Plan.

RECOMMENDATION: The MAPC has considered the expansion of existing businesses on a site by site consideration. The proposed zoning will bring a critical operational component into close proximity of the applicant’s headquarters and the scale, size and location of the operations fits into the neighborhood. Although the requested OW is less restrictive than the current LC zoning, the proposed Protective Overlay (PO) is crafted to ensure that subject site remains a compatible use in the residential neighborhood. Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the following provisions of the PO:

- (1) Permitted uses are general office, warehousing, government services, library, parks and recreation, safety services, university or college, minor utilities, automated teller machine, bank or financial institution, broadcast-recording studio, funeral home, monument sales, personal care service, personal improvement service, limited printing and copying, general retail, vocational school and wholesale or business services.
- (2) Dedicate 10 feet of right-of-way off of the east lot lines of Lots 193 and 195, Burr’s 2nd Addition.
- (3) Access shall be approved by the Traffic Engineer.
- (4) The site shall be come into compliance with the Unified Zoning Code’s (UZC) screening, lighting and landscaping standards and other applicable development standards.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** With the exception of the applicant’s LC and GO zoned office and LC zoned subject site, the surrounding neighborhood consist of B zoned single-family residences, scattered duplexes and small multi-family residences (built 1910-1940s). Kellogg Avenue/US Highway 54 separates the north side of the applicant’s properties and the neighborhood from a neighborhood of GC and LC zoned businesses.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The current LC zoning allows the 0.47-acre site to be developed with a wide range of commercial and residential uses. The site’s location along Hydraulic Avenue and the south side of Kellogg Avenue/ US Highway 54 lessens its appeal for single-family residential use.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested OW zoning with the proposed Protective Overlay allows many of the commercial uses permitted in the LC zoning district, plus the applicants desired use as a warehouse. However, unlike the LC zoning district the OW zoning district does not permit residential uses. The relatively small scale and size of the operations fits into the neighborhood. The location of the

operations with direct access onto Hydraulic Avenue and close access onto Kellogg Avenue/US Highway 54, via IH 135, lessen the site's appeal for single-family residential. These considerations can be applied in regards to concerns about spot zoning.

- (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 requested OW zoning and the proposed PO will allow development on underutilized property and allow a critical operational component (receiving, warehousing and distribution) to be relocated into close proximity (directly across Harry Street) with the applicant's headquarters/office, which appears to be the newest development in the neighborhood. Denial of the request could impose a financial hardship on the owner.
- (5) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2013 Land Use Guide of the Comprehensive Plan" (2013-Plan) identifies the LC zoned subject site as "urban residential." The urban residential category encompasses areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality. The subject site's LC zoning and its proposed OW zoning are not compatible with the urban residential category. The OW District is generally compatible with the "employment/industry center" designation of the 2013-Plan.
- (6) **Impact of the proposed development on community facilities:** All services are in place and any increased demand on community facilities can be handled by current infrastructure.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, **MCKAY** seconded the motion, and it carried (10-0).

6. **Case No.: ZON2014-00010** - Caywood, LLC, c/o Jay Russell (applicant/owner) and Baughman Company, PA c/o Russ Ewy (agent) request a City zone change request from SF-5 Single-family Residential to TF-3 Two-family Residential on property described as:

Lots 14 through 30, inclusive, Block A, Lots 10 through 16, inclusive, Block B, and Lots 1 through 4, inclusive, Block C, all in Clifton Cove Addition, Sedgwick County, Kansas.

Staff announced that the applicant requested a deferral until the August 21, 2014 Planning Commission Hearing.

MOTION: To defer the case until the August 21, 2014, Planning Commission Hearing.

J. JOHNSON moved, **WARREN** seconded the motion, and it carried (10-0).

7. **Case No.: CUP2014-00013** - R & R Realty, LLC (owner); Baughman Company, PA c/o Russ Ewy (agnt) request a City CUP amendment to DP-267, Tyler's Landing Commercial Plaza Community Unit Plan to allow residential use in LC Limited Commercial zoning on property described as:

Lots 2, 3, 4 and 5, Block A, Tyler’s Landing Commercial Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The subject site at the southeast corner of 37th Street North and Tyler Road was rezoned to LC Limited Commercial (LC) with DP-267, the Tyler Landing Commercial Plaza Community Unit Plan (CUP), in 2004. The CUP remains vacant since zoning, CUP approval and platting. LC zoning and the CUP permit residential development by right; however, the development standards of the CUP (such as access, architectural compatibility, setbacks, screening and landscaping) are for commercial development. The applicant desires the flexibility to develop single and/or two-family residences with development standards common to residential development on Parcels 2 through 5; therefore the applicant requests this amendment. Parcels 1, 6 and 7 at the furthest south and furthest east portions of the CUP are under a different ownership and would be unaffected by this CUP amendment. If the application area develops with single and/or two-family residences, the CUP would require replatting and therefore re-establishing setbacks and access controls. The applicant proposes a wood screening fence between residential development in the CUP and existing residential lots to the southeast; the Unified Zoning Code (UZC) would not typically require this screening between single-family or two-family residential developments. The applicant also proposes limiting the 6.45-acre site to 26 single-family or 52 two-family dwellings (see the attached CUP document). Under low-density residential zoning, the UZC would allow one single-family residence per 5,000 square feet or 1 duplex unit per 3,000 square feet for a total of 48 single-family units or over 80 two-family units on a site this size.

The entire DP-267 is undeveloped, the County Tax Assessor lists the current land use as “farming/ranch land with no improvements.” North of the site, across Central, is a single-family residence within the City of Maize, vacant LC property under Protective Overlay PO-129, and the Avalon Park 2nd Addition which is zoned TF-3 Two-family Residential (TF-3) and developed with duplexes. South of the site is the vacant, LC zoned Parcel 1 of DP-267; further south and southeast of the site is the SF-5 Single-family Residential (SF-5) zoned Tyler’s Landing 3rd Addition. Of the nine residential lots bordering the application area to the southeast, three are developed with residences. East of the site are the vacant, LC zoned Parcels 6 and 7 of DP-267; further east is the SF-5 zoned Tyler’s Landing 3rd and 4th Additions. West of the site, across Tyler Road is an SF-5 zoned high school.

CASE HISTORY: The site was rezoned to LC with DP 261 in 2004 and was platted as the Tyler’s Landing Commercial Addition in 2005. The site remains undeveloped.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, TF-3, City of Maize	Single and two-family residences, vacant
SOUTH:	LC, SF-5	Vacant, single-family residences
EAST:	LC, SF-5	Vacant, single-family residences
WEST:	SF-5	High school

PUBLIC SERVICES: The CUP is currently platted with one right-in/out and two full movement access points to 37th Street North, and two right-in/out and one full movement access point to Tyler. The proposed CUP amendment would require replatting for residential development, and therefore re-establishing access controls. This portion Tyler is a 120-foot, two-lane arterial with additional turn lanes

at the intersection. This portion of West 37th Street North is a 120-foot, four-lane arterial with a central turn lane and additional turn lanes at the intersection. 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 “local commercial.” The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The UZC considers residential development less intense than commercial development.

RECOMMENDATION: The applicant’s request is based on a desire to develop the site with residences, a less intense land use than what the current zoning and CUP would permit. The proposed development should have significantly less impact on surrounding residences than uses currently permitted by right. Staff would note that a large duplex development exists nearby; the applicant proposes development standards for a land use that already exists in the immediate area. Bordering single-family residential lots southeast of the site are only one-third developed, and the applicant proposes screening and density limitations that would not be required by residential zoning under the UZC.

Based upon the information available prior to the public hearings, planning staff recommends that the request for an amendment to DP-267 to allow residential use with residential development standards be **APPROVED** subject to the following conditions:

- (1) The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days of approval or the request shall be considered denied and closed.
- (2) 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:** The entire DP-267 is undeveloped, the County Tax Assessor lists the current land use as “farming/ranch land with no improvements.” North of the site, across Central, is a single-family residence within the City of Maize, vacant LC property under Protective Overlay PO-129, and the Avalon Park 2nd Addition which is zoned TF-3 and developed with duplexes. South of the site is the vacant, LC zoned Parcel 1 of DP-267; further south and southeast of the site is the SF-5 zoned Tyler’s Landing 3rd Addition. Of the nine residential lots bordering the application area to the southeast, three are developed with residences. East of the site are the vacant, LC zoned Parcels 6 and 7 of DP-267; further east are the SF-5 zoned Tyler’s Landing 3rd and 4th Additions. West of the site, across Tyler Road is an SF-5 zoned high school.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC with DP-267 use restrictions and development standards which accommodates a wide range of uses. The site could be developed with residences under the current CUP standards.

However, the CUP would currently require that residences have commercial standards for access, architectural compatibility, setbacks, screening and landscaping.

- (3) Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed amendment would allow residences with residential development standards. The proposed development would have fewer impacts on nearby residences than commercial development allowed within the CUP.
- (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 “local commercial.” The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The UZC considers residential development less intense than commercial development.
- (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 traffic for more intense uses than those proposed.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, **MCKAY** seconded the motion, and it carried (10-0).

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8. **Case No.: CON2014-00019** - Associated Material & Supply Co., Inc, c/o Nadine Stannard (owner) and Ruggles and Bohm, PA, c/o Chris Bohm (agent) request a County Conditional Use request to amend CU-346 to extend operational time (25 years) and to amend the post operational site plan on SF-20 Single-family Residential zoned property described as:

The East half of the Southeast Quarter EXCEPT 14 acres for floodway in Condemnation Case A-33666 and EXCEPT that part for roads on the South, all in Section 15, Township 26, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

AND

Government lots 2 and 6 and the South half of the Southwest Quarter EXCEPT for 56.28 acres in Condemnation Case A-33666 and EXCEPT the West 500 feet of the South 550 feet thereof and EXCEPT part for road on the South, all in Section 14, Township 26, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

AND

Government lot 3 EXCEPT 20 acres for floodway in Condemnation Case A-33666, all in Section 14, Township 26, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

AND

That part of the Southwest Quarter beginning at the Southwest corner; thence East 500 feet; thence North 550 feet; thence West 500 feet; thence South 550 feet to the point of beginning EXCEPT roads on the South, all in Section 14, Township 26, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting an amendment to CU-346, a Conditional Use to permit “mining or quarrying,”/the extraction and removal of sand and gravel from the site. Condition “X” of CU-346 states that,” All sand and gravel extraction shall be completed within 25-years after approval of this conditional use permit by the Board of County Commissioners,” (BoCC). CU-346 was approved by the Board of County Commissioners October 23, 1991, thus its remaining operational time is approximately 26-months. Condition “X” also states that an extension of the operational time can be granted by the BoCC after a public hearing by the MAPC, thus the MAPC’s consideration of this request. The proposed amendment also includes: changing the operational plan, which will increase the size of the post operational sand pit lake (from 113.7-acres to 122.1-acres) in two phases, and; changing the post operation plan for the site, by reducing the number of single-family residential lots. Other conditions in CU-346 shall be updated in regards to zoning references, County departments, or in the form of referencing conditions to remain in effect.

The applicant has provided a letter outlining the need for the additional 25-years. Reasons given for the proposed extension include: the recent economic recession slowing the demands for the sand and gravel extracted from the site, thus not allowing the conditional use to be more fully realized, and; the owners studying the possibility of extracting more materials for from the site with additional equipment that they would then purchase.

The SF-20 Single-Family Residential (SF-20) zoned site is located on the north side of 53rd Street North, at the end of Hoover Road, where it intersects 53rd Street North. The site runs from the Arkansas River on its east side to about a ¼-mile past the Hoover Road – 53rd Street North intersection on its west side. The Arkansas River also abuts the north side of the site. SF-20 and RR Rural Residential (RR) zoned active sand/gravel extraction and removal operations, low density large tract and suburban scale single-family residences, single-family residences built around sand pits lakes, agricultural lands, and inactive sand pits either abut or are adjacent to the west, northwest, southeast, south and southwest sides of the site. The Arkansas River is the reason this area is dotted with so many active sand/gravel extraction and removal operations and single-family residential development built around sand pit lakes and inactive sand pit lakes. The site is also located over the Equus Beds.

CASE HISTORY: The unplatted property is zoned SF-20. At the time of the approval of Conditional Use CU-346 the site was zoned R-1 Suburban Residential (R-1). CU-346, a Conditional use for the extraction and removal of sand and gravel from the site was approved by the Board of County Commissioners October 23, 1991.

ADJACENT ZONING AND LAND USE:

NORTH:	Arkansas River, RR	Agricultural land
SOUTH:	SF-20	Agricultural land, single-family residences built around sand pit lakes
EAST:	Arkansas River, SF-20	Agricultural lands, low density suburban and large tract single-family residences
WEST:	SF-20, RR	Low density suburban and large tract single-family residences, single-family residence built around sand pit lakes, agricultural land

PUBLIC SERVICES: No public utilities are available to the site. Access to the site is off of 53rd Street North, a paved two-lane arterial road/County Highway, with 90 feet of full right-of-way. 53rd Street North is the first road that crosses the Arkansas River north of K-96/IH-235 crossing. Hoover Road can be accessed off of 53rd Street North. Hoover Road is a paved two-lane arterial road/County Highway, with 60 feet of full right-of-way.

CONFORMANCE TO PLANS/POLICIES: The “2013 Land Use Guide of the Comprehensive Plan” (2013-Plan) identifies the SF-20 zoned site as a “potential future park site.” The site is shown as being close to a “Proposed Park Target Area” in the “Wichita Parks and Open Space Plan,” adopted 2009. The Proposed Park Target Areas are identified as areas where new parks are needed to meet future community needs. The site’s current SF-20 zoning allows parks by right. The site’s current SF-20 zoning also allows single-family residential uses by right.

The proposed sand extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) and the proposed single-family residential development around the sand pit lake after the conclusion of the extraction operation both fit into the “urban development mix.”

The site is zoned SF-20. The UZC, allows consideration of mining or quarrying as a Conditional Use in the SF-20 zoning district; UZC, Sec-III-D.6.gg. Sec-III-D.6.gg. has 23 supplementary conditions for a mining and quarrying Conditional Use.

Since CU-346’s approval in 1991 there has been a substantial increase in sand and gravel extraction and removal operations and their subsequent sand pit lakes in the area. There has also been a slower, less significant increase in the low density, large tract single-family residential development in the area. This development trend does not prevent the subject site from being mostly in conformance with the Comprehensive Plan’s Land Use-Industrial Strategy IV.A.1, which recommends protecting industrial areas “from encroachment or expansion of residential land uses by requiring appropriate buffers for expansion of the residential use when a nuisance situation is likely to be created.” The Industrial Locational Guidelines recommend:

- (1) Industrial areas should be located in close proximity to support services such as major arterials, truck routes, highways, utilities trunk lines, rail spurs, and airports and as extensions of existing industrial uses. The site still has direct access onto has access onto 53rd Street North, a paved two lane arterial road/County Highway.
- (2) Industrial traffic not to feed directly into local streets in residential areas. There are no residential streets that truck traffic from the site needs to pass through to get to and out of the site.
- (3) Located away from existing or planned residential areas, and site so as not to generate industrial traffic through less intensive land use areas. The Conditional Use for sand extraction will generate industrial traffic (primarily dump trucks) through an area that is a mix of agricultural land, active sand extraction operations, low density large tract single-family residential and a few large tract single-family residential development built around sand pit lakes.

RECOMMENDATION: The requested amendment would permit other 25-years of industrial use (sand and gravel excavation and removal) to provide the greater community with an essential material needed for concrete, which is required for residential, commercial, and industrial development, maintenance and repair. Its subsequent single-family residential development around the sand pit lake after the conclusion of the extraction operation is a common pattern in the larger area. Based upon

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

1. If approved by the MAPC and the BoCC, the 25-year sand and gravel excavation and removal period will begin at the end of the current permitted 25-years off sand and gravel excavation and removal period, which ends October 23, 1991.
2. All other supplementary conditions of CU-346 shall remain in effect, unless updated in regards to the current supplemental use regulations for mining or quarrying, updating zoning references, or County departments.
3. Sand and gravel extraction will be in two phases, Phase 1 and Phase 2.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

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

1. **The zoning, uses and character of the neighborhood:** The SF-20 zoned subject site is located in an area of SF-20 and RR zoned active sand/gravel extraction and removal operations, low density large tract and suburban scale single-family residences, single-family residences built around sand pits lakes, agricultural lands, and inactive sand pits. The Arkansas River runs north – south through the area and is the reason this area is dotted with so many active sand/gravel extraction and removal operations and single-family residential development built around sand pit lakes and inactive sand pit lakes.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-20, which is meant to accommodate low to moderate density single-family residential development. The excavation and removal of sand (mining and quarrying) can be considered as a Conditional Use in the SF-20 zoning district on a site by site review.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** An increase in soil erosion and blowing dust are a given. However, the area is dominated by active sand and gravel extraction and removal operations or retired sand extraction operations that have no development around them or low density to moderate density single-family residential development built around them, as well as agricultural land. The current use is not out of character with the area. The proposed 25-year extension may mean that his operation could be one of the last in the immediate area. However, because of the area's proximity to the Arkansas River there is also the possibility that more of the area's agricultural land could turn into sand and gravel extraction and removal operations, meaning the subject site would not be out of character with the area 25-years into the future. CON2014-12, a sand and gravel extraction and removal operation was approved June 19, 2014 for a period of 16 years.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2013 Land Use Guide of the Comprehensive Plan" (2013-Plan) identifies the SF-20 zoned site as a "potential future park site." The site is shown as being close to a "Proposed Park Target Area" in the "Wichita Parks and Open Space Plan;" adopted 2009. The Proposed Park Target Areas are identified as areas where new parks are needed to meet future

community needs. The site's current SF-20 zoning allows parks by right. The site's current SF-20 zoning also allows single-family residential uses by right.

The proposed sand extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) and the proposed single-family residential development around the sand pit lake after the conclusion of the extraction operation both fit into the "urban development mix."

The site is zoned SF-20. The UZC, allows consideration of mining or quarrying as a Conditional Use in the SF-20 zoning district; UZC, Sec-III-D.6.gg. Sec-III-D.6.gg. has 23 supplementary conditions for a mining and quarrying Conditional Use.

Since CU-346's approval in 1991 there has been a substantial increase in sand and gravel extraction and removal operations and their subsequent sand pit lakes in the area. There has also been a slower, less significant increase in the low density, large tract single-family residential development in the area. This development trend does not prevent the subject site from being mostly in conformance with the Comprehensive Plan's Land Use-Industrial Strategy IV.A.1, which recommends protecting industrial areas "from encroachment or expansion of residential land uses by requiring appropriate buffers for expansion of the residential use when a nuisance situation is likely to be created."

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

BILL LONGNECKER, Planning Staff presented the Staff Report.

J. JOHNSON clarified that the end date was 2041.

LONGNECKER said that was correct.

FOSTER noted that there was a typographical error in the location description.

CHRIS BOHM, RUGGLES & BOHM, PA, 924 NORTH MAIN, AGENT FOR THE APPLICANT Nadine Stannard who he said was present and would like to speak after he was done. He said the reason for the request was twofold; number one to allow between 5-10 years to finish the original intent of the conditional use, i.e., finish shaping the exposed water surface on the east side and continue the normal depth for extraction of the materials. He commented that the operation slowed during the recession so they need additional time to get that work completed. He said secondly, in the intervening time the applicant would like to do some investigation of subsurface below the bottom of the existing pond. He said with new modern extraction techniques, if it is viable, they may be able to extract materials from a lower depth. He said they need this additional time to finish up the original request and investigate whether deep extraction is possible to justify investment in the equipment that would be required to accomplish that. He said if the deep extraction is possible they envision a 15-year window to continue the operation. He said they believe it is a great opportunity to use the asset for a longer period of time and leave everything alone on the surface.

NADINE STANNARD, PO BOX 4476 said she has petitions from the neighbors who are in favor of the operation staying there. She indicated that the petitions were from three neighbors to the south, one to the west, one east of Hoover Road and one west of Hoover Road. She said she also put a petition on the counter for her customers to sign so there are additional signatures from other people. She said of the neighbors that she talked to none of them were opposed to the request but added that one neighbor did not sign the petition.

KEVIN CAMPBELL, 5938 WEST 53RD STREET NORTH said the property was located along the west side of this parcel across the lake from 53rd Street North to the corner that intersects with the river and to the west across the west of the lake. He said they purchased the property several months ago with the intention of developing high value residential homes. He commented that Black Hills Energy is extending gas lines to service this area. He said they have also been in discussion with Westar to provide service. He also mentioned possible annexation of the area by the City of Wichita. He said when they purchased the property they understood the operation was soon to expire. He said they are approximately a year away from developing the property which would coincide with the termination of the current mining operation. He said their biggest concern is vehicles using the road along the west side of the applicant's property. He said they see large dump trucks driven on that road on a regular basis. He also mentioned noise, traffic and dust which would not be conducive to the high value residential development they are proposing. He said those are their primary reasons for opposing the request. He said they are receptive to some type of negotiated agreement regarding the use of that side of the applicant's property because it would certainly devalue property to the west significantly if the operation is allowed to continue for an extensive period of time.

J. JOHNSON asked the applicant to verify the property he owns on the aerial map and the specific location of the upscale homes they plan to build.

CAMPBELL said they have a preliminary plat for houses around the lake. He said there are approximately one dozen "estate type home" sites. He also mentioned that property to the west of this location was for sale for potential residential development.

RAMSEY asked if there was some type of barrier between his property and the mining operation such as a tree row.

CAMPBELL said there are some cedar trees with intermittent gaps. He commented that he had not been notified about this application.

RAMSEY asked what information Mr. Campbell based his comment on that approval of this application will "significantly devalue his property". He mentioned the sand pits around the Emerald Bay development, which is very high value property.

CAMPBELL said they are concerned about trucks operating along the roadway on the west side of the applicant's property. He said since the operation has moved further to the east, the applicant is no longer operating trucks on the west side of the property and in fact, wheat has been planted in the area. He said if the operation is allowed to continue deeper, the applicant may start using trucks along the west side of their property, which is not conducive to million dollar home development. He said he did

not believe that was the situation at the other location Commissioner Ramsey mentioned. He mentioned documents provided by the applicant that depicted mapping of potential lots for houses in the future and public access along the roadway for future development.

FOSTER asked Mr. Campbell about the location of the drive and access on the east side of his proposed development.

CAMPBELL said they had two plans; one of which was putting the road entirely on their property west of the tree row on the east of their property which would become a private drive with no public access.

FOSTER mentioned that the plat for this application depicts installing the roadway along the west side of their property and asked if that will eliminate the tree buffer.

CAMPBELL said the tree row would come out and added that they had been considering relocating those trees closer to the lake to open up views of the lake for the residents.

BOHM briefly explained the “Operational Plan” included in the agenda packet. He said the plan has the work occurring in two phases. He said Area One is to the west with slopes finished at 5-1 and a vegetated area. He said Area Two will include finishing up the surface excavation of the pond, which was the original intent of the CUP. He said once that is done and the slopes are stabilized, the applicant is allowed to subsurface the aggregate from the lower depths. He said none of those operations will take place on the west side of the property. He said mowing and reseeded of the banks would be necessary on the west half of the site. He said they believe this proposal is a terrific use of an existing asset. He added that all the operations for the subsurface extraction will happen from the island or knoll in the middle of the property. He said the applicant will not need perimeter access with trucks to do the extraction in Area One.

FOSTER commented that 25 years is a pretty long extension. He asked if the full 25 years was needed. In addition, he voiced concern about losing the entire buffer of trees on the west side for a future roadway. He also asked about limiting or cutting off access to the roadway on the west.

BOHM said he would defer those questions to the applicant.

STANNARD said she hasn't considered the housing development. She mentioned that the trees along the road were not on her property so they wouldn't be taking them out. She said if they can go deep with extraction, 15 years is an absolute logical time considering the customers they have. She said it would take 7-10 years to finish up what they are currently doing and another 15 years in order to go deeper. She said they believe there is 15 years of material if their projections are accurate.

MCKAY asked where the tree line was in relationship to the fence on the west side.

STANNARD indicated the tree line was west of the fence on Mr. Campbells' property.

G. SHERMAN asked the applicant if they would consider an additional condition about eliminating trucks on the west side of the property.

STANNARD responded that excluding trucks entirely might pose a potential problem for them. She said there was quite a supply of dirt back there that they used for sloping; however, that is now gone. She said she understands Mr. Campbell's concern and added that there is no more dirt to take from that area and it is currently being farmed. She said they may need the road for equipment associated with the farming operation.

FOSTER asked staff to walk through the surrounding zoning and any buffer that is required, especially on the west side.

LONGNECKER said the property the application area has SF-20 zoning.

MILLER commented that the Supplemental Use Regulations regarding sand pits requires that stock piled materials need to be located at least 100 feet from any public right-of-way or 50 feet from the property line.

FOSTER said he didn't see any buffer requirement in the application paperwork.

MILLER said the buffer is the minimum distance from the property line required by the Supplemental Use Regulations.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, **MCKAY** seconded the motion, and it carried (10-0).

CHAIR KLAUSMEYER recused himself from the item and turned the meeting over to the **VICE CHAIR GOOLSBY**.

VICE CHAIR GOOLSBY in the Chair.

9. **Case No.: CON2014-00020** - Bob Bergkamp Construction Co., Inc. and Towanda Land Company, LLC (James K and Chris Snook)/ Millo M. Unruh, Jr. request a County Conditional Use request to permit mining and quarrying on property described as:

The Southwest Quarter of Section 11, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT a tract described as all that part of the west 750 feet of said Southwest Quarter lying south of the center line of Dry Creek, AND EXCEPT a tract described as beginning at a point on the West line of said Southwest Quarter, 467 feet north of the Southwest corner of said Southwest Quarter; thence east at right angles, 187.6 feet; thence southeasterly at an interior angle of 157°53'40", 474.15 feet; thence south at an interior angle of 112°06'20", 117 feet to the center of Dry Creek; thence northwesterly and southwesterly along the center line of said Dry Creek to a point on the West line of said Southwest Quarter, 151 feet north of the Southwest corner of said Southwest Quarter; thence north 316 feet to the point of beginning, AND EXCEPT a tract described as beginning at a point on the West line of said Southwest Quarter, 467 feet north of the Southwest corner of said Southwest Quarter; thence north 50 feet; thence east at right angles 187.6 feet; thence southeasterly at an interior angle of 157°53'40", 474.15 feet; thence south 50 feet; thence northwesterly, parallel to said

Southeasterly line, 474.15 feet; thence west 187.6 feet to the point of beginning; AND EXCEPT that part described as Blackstone Addition, Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is seeking approval of a “conditional use” to permit the “mining and quarrying” of soil from 88.32 unplatted acres, zoned SF-20 Single-family Residential (SF-20) that are located 1,560 feet north of West 13th Street North, east of North 151st Street West. The application area has approximately 700 feet of frontage along West 13th Street North and 2,080 feet of frontage along North 151st Street West. The application area does not include the 6.06 acres located immediately on the northeast corner of the intersection of West 13th Street North and North 151st Street West.

The applicant proposes to initially excavate the topsoil from two areas (depicted on the attached site plan and described in the attached “summary of operations”) that total 7.40 acres, and which are located in the northeast corner and east central portions of the site. Eventually the two individual excavation sites will be combined into one larger excavation area that will contain 12.25 acres. A haul road is proposed to be installed in the northeastern corner of the site, and will parallel the north property line for half the width of the site and then turn south along the northern excavation area and terminate at the southern excavation area. The haul road will be maintained with motor grader and water truck. The excavation area is proposed to be enclosed with a barbed wire fence. (Note: The request to permit a barbed wire fence is a modification to the Wichita-Sedgwick County Unified Zoning Code (UZC) “supplementary use regulation” (Unified Zoning Code (UZC) Art. III, Sec. III-D.6.gg(4)) requirement for a four-foot tall chain link fence topped by three or more strands of barbed wire that requires MAPC or governing body approval.) Six trucks will be used to haul the dirt off-site to construction projects. From the site the trucks will travel north on North 151st Street West. The applicant has provided a maintenance agreement with Attica Township for North 151st Street West to: maintain the road with a motorgrader to prevent “wash boarding”; water the road to prevent dust and restore any damage caused by soil removal operation (attached). The applicant has requested 10 years to complete the project. Hours of operation are proposed to be Monday-Friday 7:00 a.m. to 5:00 p.m. Depth of excavation is proposed to be 15 feet from surface to the bottom of the excavation.

Most of the applicant’s property is located within the 100 year floodplain of North Dry Creek, which is heavily treed. The applicant has included a drainage plan with the application. The drainage plan has been approved by County Engineering subject to two conditions: a floodplain development permit is required from MABCD prior to any grading or excavation and a county stormwater permit will be required prior to any land disturbing activities.

Land to the north and south of the site is zoned SF-20, and is developed with large-lot residences (tracts of 2.52, 3.54 and 4.38 acres) or is farm land. Land to the east of the site is zoned SF-5 Single-family Residential (SF-5) and is platted as the Blackstone Addition containing 17,424 square-foot residential lots. Construction on lots located within the Blackstone Addition is in the beginning stages. Much of the Blackstone Addition is currently undeveloped. Land to the west of the site, across North 151st Street West, is zoned RR Rural Residential (RR), and is farm land. Northwest of the site is the Marksdale Addition that contains 14 lots containing approximately 26,136 square feet per lot that are developed with single-family residences.

Article III, Sec.III-D.6.gg of the UZC contains 23 development standards related to mining or quarrying, sand and gravel extraction. In summary, the “supplementary use regulations” require: 1) submission and development of the site in compliance with the site plan; 2) the depiction of the area to be excavated

and the timing of the excavation; 3) a redevelopment plan for the site when excavation is completed; 4) perimeter fencing; 5) minimum excavation depth to be six feet below the water table; 6) dust control; 7) erosion control; 8 and 9) bank stabilization with topsoil; 10) platting when building or other non-excavation permits are required; 11) commercial recreation activities to be prohibited; 12) a restrictive covenant preventing use of the site as a landfill or dumping ground; 13) stockpiled material to be located 100 feet or more from public right-of-way or within 50 feet of a property line; 14) the prohibition of a contractor's material and equipment storage yard; 15) the length of time excavation can occur to be established by the conditional use; 16) hours of operation to be between 6:00 a.m. to sunset; 17) approval of on-site water and sewer facilities; 18) any water wells required by the excavation to be approved; 19) the site to be open for inspection and installation of groundwater monitoring wells; 20) approval for the storage of fuel or chemicals; 21) approval of a drainage plan; 22) haul roads shall be sand or gravel condition and shall be maintained to minimize blowing dust and 23) the applicant to obtain all applicable permits.

CASE HISTORY: The property's current zoning was probably applied in 1985 when Sedgwick County adopted countywide zoning.

ADJACENT ZONING AND LAND USE:

North: SF-20; farm land
South: SF-20; farm land
East: SF-5; single-family residential
West: RR; farm land with a residence

PUBLIC SERVICES: The use does not require public water or sanitary sewer service. North 151st Street West is an Attica Township maintained sand and gravel section line road with approximately 35 feet of half-street right-of-way. The applicant has submitted a maintenance agreement with Attica Township for 151st Street.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide indicates the site is located inside Wichita's 20130 Urban Growth Area, which is land that has the potential to be developed by the year 2030.

RECOMMENDATION: Based upon the information available at the time the staff report was prepared, it is recommended that the request be approved subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Director. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted on the site.
2. As directed by the Attica Township Trustee, the applicant shall maintain North 151st Street to prevent wash boarding and rutting; shall treat said road to prevent dust and shall restore any damage caused by activities permitted by this Conditional Use.
3. The operational plan shall illustrate which area is to be excavated and in what phase.

4. A redevelopment plan depicting uses for the property after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
5. Equipment on the site shall not project noise and/or light onto any surrounding properties which exceeds the noise and/or light spillage limits of existing County codes or compatibility standards.
6. The extraction shall be to at least a minimum depth of six feet below the normal water table, as determined by the Director of Sedgwick County Code Enforcement.
7. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
8. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
9. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
10. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.
11. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
12. The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line.
13. Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 12 months after completion of the extraction operation, the land surrounding the excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.
14. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset, Monday through Friday.

15. The Conditional Use for the sand extraction operation shall be valid for a period of ten years. The applicant may apply to the Planning Director for additional time with an administrative adjustment.
16. All on-site water and sewage facilities shall be approved by and constructed to the standards of the Department of Code Enforcement for the County or Department of Environmental Services for the City.
17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of Health and Environment rules and regulations.
18. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for the installation and management of groundwater monitoring wells.
19. Any on-site storage of fuels or chemicals must be approved by Sedgwick County Fire Department officials and any other appropriate parties.
20. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the area of the Site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drainage plan. As noted above the drainage plan has been approved provided: a floodplain development permit is obtained from MABCD prior to any grading or excavating and a county stormwater permit will be obtained prior to any land disturbing activities.
21. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.
22. All other applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.
23. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
24. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Land to the north and south of the site is zoned SF-20, and is developed with large-lot residences (tracts of 2.52, 3.54 and 4.38 acres) or is farm land. Land to the east of the site is zoned SF-5 Single-family Residential (SF-5) and is platted as the Blackstone Addition containing residential lots of approximately 17,424 square feet. Construction on lots located within the Blackstone Addition is in the beginning stages,

much of the subdivision is currently undeveloped. Land to the west of the site is zoned RR Rural Residential (RR) and is farm land. Northwest of the site is the Marksdale Addition that contains 14 lots containing approximately .6 acre per lot that are developed with single-family residences. North 151st Street West is an unpaved section line road. The application area abuts the city limits of Wichita.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-20 which primarily permits larger-lot single-family residences and a few civic and institutional uses, such as schools, parks or public schools. The site is heavily impacted by the 100-year floodplain of North Dry Creek, which, without modification, makes much of the site undesirable for intensive development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby property owners. The conditions of approval address usual impacts of soil or sand extraction. The eastern property line is North Dry Creek and is heavily treed. The closest residence to the south is located approximately 1,000 feet away. The closest platted lot to the east is approximately 200 feet away.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Topsoil is required for construction projects, both public and private. The applicant owns a construction company that needs a supply of topsoil. Approval of the request will allow the applicant to secure a supply of topsoil. Denial would presumably represent 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 indicates the site is located inside Wichita's 20130 Urban Growth Area, which is land that has the potential to be developed by the year 2030. Approval of the request is a temporary use of property that otherwise has significant development constraints. Less than 13 of the site's 88 acres will be permanently impacted by the proposed project.
6. Impact of the proposed development on community facilities: County Engineering has approved a drainage plan that preserves the floodway's ability to carry water. The applicant has provided a road maintenance agreement with Attica Township for North 151st Street West.

DALE MILLER, Planning Staff presented the Staff Report.

MILLER noted a housekeeping item with relationship to inquiries he received on how protest petitions work. He said the individual "Public Hearing Notices" that were mailed to the surrounding property owners on this case listed the City Clerk instead of the County Clerk as the place to turn in petitions. In addition, he noted that the notice also indicated that petitions would be accepted anytime from the time the application was submitted until the Planning Commission made a recommendation; however, with conditional use cases petitions are only valid after the Planning Commission has rendered a decision until the 14th day after. He said staff will check with both the City and County Clerks to insure that all protest petitions turned in will count.

MILLER referred to handouts regarding the application including correspondence from a concerned citizen and a portion of the mortgage agreement between the bank and the applicant. He said it is his understanding that some of the neighbors would like some of the conditions contained in that mortgage document to be included in the conditions of approval.

G. SHERMAN asked staff to clarify the proposed hours of operation (7:00 a.m. to 5:00 p.m. or 6:00 a.m. until sunset). He also asked about the clause regarding equipment on site not projecting noise or light onto any surrounding property. He commented that unless the applicant is going to dig the ponds by hand, noise levels will probably be exceeded. He mentioned trucks and other excavation equipment.

MILLER indicated the applicant had offered the hours 7:00 a.m. to 5:00 p.m. He said 6:00 a.m. until sunset is what is required in the Supplemental Use Regulations. He commented that the County does not have a “Noise Ordinance” like the City of Wichita. He asked if the Commission wanted to reword or eliminate that section of the staff recommendations.

G. SHERMAN said he did not have a suggestion for alternative language; however, he said he has spent time on sites where dirt is being moved and it is noisy. He noted how close the site was to a residential area.

J. JOHNSON asked staff to explain the parameters of the floodway and asked if that included the residential area.

MILLER briefly reviewed the boundaries of the flood plain on the aerial map. He said he believed the floodway was the darker area curving around the creek. He added that the entire site has some type of flood plain on it. He said when the plat was done; the residential area was either raised up/mitigated or kept out of the flood plain.

WARREN asked if the land to the east was higher in elevation than the application area. He also asked about future construction on the application area.

MILLER said he doesn’t know the difference in elevation; however, he added that given the fact that the applicant received their permits to build, he assumed the land is higher in elevation. He said submission and approval of a drainage plan is part of the platting process. He said he believed it would take a monumental effort to bring the area up to construction standards.

COMMISSIONER MITCHELL commented there couldn’t be construction at the location without major changes.

MILO UNRUH, JR., ATTORNEY, ARN, MULLINS, UNRUH, KUHN & WILSON, 300 WEST DOUGLAS, SUITE 330, AGENT FOR THE APPLICANTS explained that Towanda Land Company owns the land and Bob Bergkamp Construction Co., Inc. is the dirt contractor. He said Chris Snook, Vice President, Bob Bergkamp Construction Co. was present to answer any questions. He commented that this application is strictly for soil removal. He said this is not a rock quarry, rock crusher or landfill. He noted that most of the site was located within the 100-year flood plain so future development of the tract is somewhat limited. He said this application would permit use of the tract. He said the site has been tested and is specific in what is called “low-volume change soil” which is soil that is between 18-24 inches in depth used below building pads and building sites.

UNRUH said the applicant has a soil site at 151st Street and Pawnee; which is quite far away from the substantial construction activity and development in the northwest part of the City, especially the Maize Corridor and the New Market Square Area. He said the applicant is looking for a soil site for development in that area. He said this is not a ten-year continuous operation. He said the client has no construction site to haul dirt to at this time. He said this site is attractive because of the type of soil and location. He said the site may be idle for months at a time. He said his client indicated that on average there may be continuous activity at the site one month at a time. He mentioned an agreement with Attica Township regarding the dust on 151st Street and Sedgwick County's approval of the drainage plan for the area. He mentioned staff's recommendation of 24 conditions to protect the public, residents and nearby landowners. He said the conditions are substantive and specific and address concerns of people who have filed petitions. He said nothing is going to happen on the site without the approval of the appropriate government office. He said they are asking that the staff recommendation and conditions included in the CUP be approved. He said Mr. Snook was available to answer any operational questions.

J. JOHNSON asked if the conditions required by the mortgage were part of the approval.

UNRUH said no, that was an agreement between his client and the lender and the lender needs to decide if they will address those items.

ROBERT PARNACOTT, ASSISTANT COUNTY COUNSELOR indicated that the mortgage document was submitted to him yesterday by persons who live in the surrounding area, not the applicant. He said the request to include the mortgage provisions in the conditional use permit is from persons who are present to speak to the Commission regarding the application, not the applicant themselves.

FOSTER asked about future plans for development of the site.

UNRUH said anything that is permitted under SF-20 zoning would be considered; however, they have not looked at specific options for development of the area due to the flood plain issue. He said they will return the property to an agricultural state; however, they don't know what is going to happen in ten years.

B. JOHNSON noted dust has always been an issue in the area and asked for clarification of the agreement with Attica Township regarding the dust on 151st Street.

UNRUH said Mr. Snook could address that question.

CHRIS SNOOK, VICE PRESIDENT, BOB BERGKAMP COMPANY, INC. commented that the biggest concern in the area is the truck traffic on 151st Street. He said they are going to run a grader and a water truck on the County road and maintain it while they are using it.

DON GRIMM, 12 NORTH HOPPER COURT, GODDARD, KANSAS said he was representing the Shirley I. Martin Trust, Martin Family Farm, Mrs. Shirley I. Martin-Grimm as well as numerous concerned residential and agricultural neighbors. He said the property under the name of Shirley I. Martin Trust is located at 14505 West 21st Street North and is bordered on the North by 21st Street, on the East and South by residential properties and on the West by 151st Street, he said it is bisected by Dry Creek and is immediately adjacent to the application area.

GRIMM said we and other petitioners are vehemently opposed to any industrial activity including mining and/or quarrying in this area for the following reasons: 1) Adverse impact to existing roadways, i.e., 13th, 21st and 151st Streets. He said use of heavy trucks and equipment will deteriorate roads and impede access for residents and commerce; 2) Adverse impact to existing flood plain. He said any dredging, digging or mining will seriously alter the flood plain; 3) Adverse impact to the indigenous flora and fauna. He said removal of trees/brush will denude the area and remove natural habitat for deer, turkey, raccoons, squirrel, fox and endangered species such as the Eastern Spotted Skunk; 4) Adverse impact to Dry Creek including upstream flooding. He said removal of trees and/or alteration of this waterway in any way will cause redirection of water and or dam the waterway causing extensive flooding in severe rains; 5) Adverse impact to existing agricultural and residential areas. He said machine noise and pollutants will endanger/impact crops, livestock and residents.

GRIMM said the area is currently agricultural with residential to the east and is not suitable for mining or quarrying. He said some comments he received were: We don't want the noise and pollution in our area; We moved to this area to be close to the agricultural community and enjoy the peacefulness of country life; We have small children and don't want 5 ton trucks speeding down our roads; and We love this area for its peace and quiet and the clean air.

GRIMM said it is the opinion of those represented by the petition that authorizing this request will not enhance their current residential/agricultural mix but will only lead to extensive problems for all residents and seriously impact the environment which we are all bound to protect. He said if they are not successful in preventing this threat to their neighborhood, they would like to stipulate that specific and stringent limitations, as noted in Wichita/Sedgwick County zoning laws and in the recommendations set forth by the MAPC be enforced and include the following conditions: 1) No recycling of concrete, asphalt or building materials; 2) No rock or concrete crushing equipment be allowed; 3) No high speed/high pressure hoses used for excavation; and 4) No dredging, excavation, widening or alteration of Dry Creek. In addition, he mentioned compliance with any existing local and State water and environments requirements. He concluded by asking staff to notify them of any additional meetings/hearing on the permit request.

JASON SNEED, 1922 NORTH 151ST STREET WEST, GODDARD, KANSAS said his property was located north of the application site. He said since they use well water, he is concerned that this operation will affect the water table since they are excavating down 15 feet. He said he does not know how deep his well is but he does not want pollutants getting into his water.

BRETT ANDREWS, 1443 NORTH BLACKSTONE COURT, WICHITA, KANSAS said he appreciated staff's presentation and the restrictions proposed in the Staff Report. He said he would like to make a couple of additions to the proposed restrictions. He requested that the hours of operation

(7:00 a.m. to 5:00 p.m.) be changed on the application since the petitioner seems to agree with that. In addition, he requested that some statement be made regarding not removing the tree line between the Dry Creek and the Blackstone Addition, which is the only barrier between his home and the proposed application/excavation site. He requested that those two items be added to the conditions if the application is approved.

DARLENE BALL, 15201 WEST 17TH STREET NORTH, GODDARD, KANSAS said her property was located just north of the proposed site. She said the road the applicant is proposing to build to get into the site is directly across from her home. She asked how often the applicant proposed to “wet” the road to minimize dust. She asked what impact the proposed use will have on her property values in the future. She asked what the applicant was planning on doing with the acreage during the excavation, will it be planted with vegetation or just left open to create more dust. She asked how they plan to contain the dust from the excavation site. She said it is a dust bowl out there all the time and she can’t imagine that having trucks up and down the road will make the situation any better.

FOSTER mentioned the access road onto the application site being directly across from her residence and asked if she would prefer that the road be moved to the north or the south.

BALL commented that the applicant can’t go north because there is a corn field. She said if the entrance was further south she supposed it wouldn’t be as noisy. She said that might mess up the applicant’s operation if they were going to plant the rest of the land into some kind of crop because the access road would slice down the middle of the crop. She said it would be great if the access road onto the site was not in the current spot being proposed.

FOSTER said he is more concerned about the comings and goings on a daily basis which he feels will be quite an intrusion on her property.

RAMSEY asked which was more important to Ms. Ball; crops or moving the road.

BALL said the road being moved. She said she didn’t know if the applicant planned on putting crops in there when they were not working or if that has been addressed.

TONY BALL, 15201 WEST 17TH STREET NORTH, GODDARD, KANSAS said his fields all drain right where the applicant is proposing installing the road. He asked if there would be better drainage or if this would make it worse.

MILLER said the Township is responsible for drainage issues on the Township road; however, the applicant will be responsible for the road on their property.

CLARENCE SPONSEL, 10300 WEST CENTRAL, WICHITA, KANSAS commented that if an all weather road were installed to handle the truck traffic that would handle most of the issues with this request.

SHIRLEY GRIMM, 12 NORTH HOPPER COURT, GODDARD, KANSAS said she would like to have her husband use part of her time to speak again.

WARREN asked legal staff about that as a point of order.

PARNACOTT said it was up to the discretion of the Commission. He said Mrs. Grimm was yielding her time even though the other person has had time to speak. He said the Chair could entertain a motion to allow that.

It was moved to allow the speaker 2 additional minutes.

DON GRIMM mentioned that drainage has always been a problem in the area. He said the applicant will need to relieve some of that if they install a road or it will be under water. He said the area is just soil, there is no bedding for a road and it is a quagmire out there when it rains. He said the roads out there flood many times during the year.

SNOOK said he would try to answer some of the questions from surrounding property owners. He said they have no intention of disturbing the tree line between their property and the Blackstone Addition. He said road mitigation depends on how hot and dry it is while they are running trucks through the area. He said the minimum is 2-3 sprayings of water per day. He said they like to wet the road at the end of a shift so the water has time to soak in. He said the remainder of the land will stay as farm land like it is now; they have no intentions of doing anything different other than some of the land will be taken out of wheat production. He said they plan on mitigating dust during operations by using a water truck. He mentioned that one of the conditions of approval was obtaining a Sedgwick County Storm Water Permit which states that 14 days after an operation ceases the area has to be established with vegetation.

MCKAY asked about moving the access road 30-40 feet further south.

SNOOK said he did not think that would be a problem and that it might be better to move the road further south away from the telephone pole.

WARREN asked about water well contamination.

SNOOK said at 15 feet they do not intend to get into groundwater and added that he thought most of the wells in that area were 60-70 feet deep.

RAMSEY asked about the four additional conditions requested by Mr. Grimm and if the applicant had any problems adding them to the other conditions recommended by staff.

SNOOK said they had no problems adding the additional conditions; however, he said he was confused about the term "high speed/high pressure hoses for excavation". He said they use a backhoe.

RAMSEY clarified then the additional limitations requested were acceptable.

SNOOK said yes.

G. SHERMAN asked if the elevated road they are installing will block drainage.

SNOOK said he believed most of the drainage would fall to the east. He said the County or Township will have to install a pipe along 151st Street.

FOSTER clarified hours of operation being 7:00 a.m. to 5:00 p.m. He asked staff if shifting the proposed entrance drive further south would be within County Code or standards.

MILLER said either Attica Township or the County would determine the applicable standard when the applicant applies for a driveway permit.

FOSTER mentioned maintaining the current drainage and removal of vegetation. He suggested that the site plan be changed to move excavation further from Dry Creek. He asked if the applicant would mind having the areas that are not part of the excavation limited to agricultural use.

SNOOK said they have no problem with that.

FOSTER also mentioned the limitations requested by the Mr. Grimm being added as conditions.

GOOLSBY asked the applicant to clarify mitigation of the dust on the roads.

SNOOK said they will mitigate dust with water trucks and graders an average of 2-3 times a day during operations. He said if it is hot and the wind is blowing, they will spray more often. He added that equipment will be on site while they are working.

PARNACOTT reminded the Commissioners that if they have had any ex-parte communication on this application it should be disclosed. He said the key issue is if a Commissioner is going to use any of the information they received in an ex-parte communication that was not disclosed at this meeting, they need to share that with the rest of the Commission.

MOTION: To approve subject to staff recommendation including the amendments the applicant has agreed to including hours of operation; moving the eastern line of the northern end of the excavation so it is not located near the tree row; limiting unused land to agricultural uses only; and the four conditions listed in correspondence received on the application.

MCKAY moved, **RAMSEY** seconded the motion, and it carried (9-0-1).

KLAUSMEYER – Abstained.

CHAIR KLAUSMEYER back in the Chair.

PARNACOTT suggested explaining the process and procedure and what happens next with the application to the audience. He said the Planning Commission has made a recommendation. He said a two week protest period was available for anyone who was not happy with the Planning Commission's recommendation and those petitions can be filed with the County Clerk. He said a letter will go out to the people who signed up on the sign-up sheet notifying them when the item will go before the County Commission (approximately 35 days).

B. JOHNSON asked staff to explain the difference between a zoning change and a conditional use permit.

PARNACOTT said the conditional use permit does not change the underlying zoning of the property but it is limited to the conditions on the permit. He said the enforcement process begins with a complaint of non-compliance which generates an inspection. He said if it is determined that there is probable cause, a notice of non-compliance will be issued which could result in a fine or revocation of the conditional use permit.

- **10. Case No.: CON2014-00021** - Wichita Children's Home / Sarah Robinson request a City Conditional Use request for a Day Care, General in TF-3 Two-family Residential zoning on property described as:

The South 69 feet of the East 16 feet of lot 12 AND the South 69 feet of lots 14, 16 and 18, Sunrise Park Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The application area is a TF-3 Two-family Residential (TF-3) zoned, .25 acre lot developed with a single-family house. The site is owned by the Wichita Children's Home; the Children's Home main campus is on contiguous property to the east and south. The applicant intends to provide a school age program for a total of 15 children 10 to 17 years old from 7:30 am to 7:30 pm daily with staff supervision at all times. The applicant has adequate outdoor play facilities and parking on their campus, therefore the applicant does not intend to make site improvements on the application area. The site has a driveway along the north property line and vacated Orchard Avenue along the south property line.

"Day care, general" is defined by the Unified Zoning Code as a day care center that "Provides care, protection and supervision for more than ten individuals at any one time, including those under the supervision or custody of the day care provider and those under the supervision or custody of employees, or a Day Care center for ten or fewer individuals at any one time that is not operated as a Home Occupation." "Day care, general" is permitted with Conditional Use approval in the TF-3 district. "Day care, general" requires one parking space per teacher/employee, plus one space per vehicle used in the center, plus one per ten children based upon an enrollment above 12, and one off-street loading space per ten students for "day care centers" with 11 or more students. The site has limited parking on the existing driveway. However, the larger, contiguous Wichita Children's Home site has additional parking, 72 off-street spaces, to support this use. Supplemental Use Regulation Article III, Section III-D.6.i requires that all day care centers comply with all applicable state regulations and outdoor play be limited to the hours of 7:30 a.m. to 6:30 p.m. if located within 100 feet of a lot containing a dwelling unit. The subject property is within 100 feet of several lots containing dwelling units.

A TF-3 zoned property north of the site is also owned by the applicant and is developed with a single-family residence. South and west of the site is the B Multi-family Residential (B) zoned Wichita Children's home with residential buildings, accessory buildings, parking areas and outdoor play areas. Further south is a portion of the B zoned Wesley Medical complex. East of the site, across Vassar, are TF-3 zoned single-family residences and a TF-3 zoned former school redeveloped as an apartment building.

CASE HISTORY: The property is a portion of Lots 12 through 18 of the Sunrise Park Addition, platted in 1888. The single-family house on the site was built in 1928.

ADJACENT ZONING AND LAND USE:

North	TF-3	Single-family residences
South	B	Wichita Children’s Home, hospital
East	TF-3	Single-family and multi-family residences
West	B	Wichita Children’s Home

PUBLIC SERVICES: North Vassar is a paved local street with an 80-foot right-of-way at this location. All other municipal services are supplied at the site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide depicts the site as appropriate for “urban residential” uses. The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.

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

1. The Conditional Use permits a “day care, general,” as defined in the Wichita-Sedgwick County Unified Zoning Code. The “day care, general” shall be developed and operated in conformance with the approved site plan and all applicable local and state regulations.
2. The maximum number of children allowed to be cared for by the day care is 18. The hours of operation shall be 7:30 am to 7:30 pm daily.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of approval, the Zoning Administrator, may, with the concurrence of the Director of the Metropolitan Area Building and Construction Department, 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: A TF-3 zoned property north of the site is also owned by the applicant and is developed with a single-family residence. South and west of the site is the B zoned Wichita Children’s home with residential buildings, accessory buildings, parking areas and outdoor play areas. Further south is a portion of the B zoned Wesley Medical complex. East of the site, across Vassar, are TF-3 zoned single-family residences and a TF-3 zoned former school redeveloped as an apartment building.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned TF-3, which accommodates single and two-family residential development. The property could continue to be used as a residence without the requested Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: A large, institutional use and associated outdoor play areas already exist on the applicant’s adjoining property. The proposed day care should have no greater impact on surrounding residences than the existing children’s home.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide depicts the site as appropriate for “urban

residential” uses. The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.

- 5. Impact of the proposed development on community facilities: Existing community facilities will accommodate the proposed use.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, **MCKAY** seconded the motion, and it carried (10-0).

The Metropolitan Area Planning Commission adjourned at 3:06 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2014.

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

(SEAL)