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WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION AGENDA

Thursday, September 29, 2016

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission will be held on **Thursday, September 29, 2016**, beginning at **1:30 PM** in the Planning Department Conference Room City Hall - 10th Floor, 455 N. Main Street, Wichita, Kansas. **If you have any questions regarding the meeting or items on this agenda, please call the Wichita-Sedgwick County Metropolitan Area Planning Department at 316.268.4421.**

1. Approval of the prior MAPC meeting minutes:

Meeting Date: July 21 and August 4, 2016 Planning Commission Minutes
ELECTIONS Chair and Vice Chair

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

Items may be taken in one motion unless there are questions or comments.

SUBDIVISION CASE DETAILS

- 2-1. **SUB2016-00021: Final Plat – BROOKFIELD ADDITION**, located on the southeast corner of 37th Street North and Greenwich Road.

Committee Action: APPROVED 6-0
Surveyor: Baughman Company, P.A.
Acreage: 118
Total Lots: 186

3. **PUBLIC HEARING – VACATION ITEMS**

ADVERTISED TO BE HEARD NO EARLIER THAN 1:30 PM

Items may be taken in one motion unless there are questions or comments.

Complete legal descriptions are available for public inspection at the Metropolitan Area Planning Department – 10th Floor, City Hall, 455 N. Main Street, Wichita, Kansas

- 3-1. **VAC2016-00035: City request to vacate a portion of a platted easement on property**, generally located midway between 31st Street South & I-135, on the northeast corner of K-15 and Crystal Street.

Committee Action: APPROVED 6-0

- 3-2. **VAC2016-00036: City request to vacate the plattor's text to amend uses allowed in a platted reserve**, generally located on the northwest side of 24th Street North and Rock Road.

Committee Action: APPROVED 6-0

- 3-3. **VAC2016-00037: City request to vacate a portion of a platted 30-foot front yard building setback on property**, generally located northeast of 13th Street North and 143rd Street East on the southeast corner of Sport of Kings and Sandpiper Streets.

Committee Action: APPROVED 6-0

PUBLIC HEARINGS

ADVERTISED TO BE HEARD NO EARLIER THAN 1:30 PM

- 4. Case No.: ZON2016-00037 and CUP2016-00028
Request: City zone change from SF-5 Single-family Residential and GO General Office to LC Limited Commercial and amendment to CUP DP-233 Highland Springs
General Location: South of W. Central Avenue and west of 135th Street West.
Presenting Planner: Kathy Morgan

- 5. Case No.: CUP2016-00024
Request: City CUP major amendment to DP-332 to expand the CUP land area and amend signage regulations.
General Location: At the northeast corner of Kellogg and West Street (608 24 S. West St.).
Presenting Planner: Scott Knebel

- 6. Case No.: CON2016-00042
Request: City Conditional Use to permit Personal Improvement Service (massage therapy) on property zoned GO General Office.
General Location: South of 3rd Street North on the west side of North Hillside Street (353 N. Hillside St.)
Presenting Planner: Kathy Morgan

- 7. Case No.: CON2016-00043
Request: City Conditional Use to permit Personal Improvement Service (massage therapy) on property zoned General Office.
General Location: North of Central and west of Edgemoor Street (603 N. Edgemoor St.)
Presenting Planner: Kathy Morgan

- 8. Case No.: DER2016-00002
Request: Adoption of the Wireless Communication Master Plan as an element of the Community Investments Plan 2015-2035, the Wichita-Sedgwick County Comprehensive Plan and Amendments to certain sections of the Wichita-Sedgwick County Unified Zoning Code (UZC) pertaining to the regulation of wireless communication facilities.
General Location: City and County wide
Presenting Planner: Scott Knebel

NON-PUBLIC HEARING ITEMS

- 9. Case No.: Amendment to MAPC By-Laws
Presenting Planner: Scott Knebel

10. Other Matters/Adjournment

Dale Miller, Secretary

Wichita-Sedgwick County Metropolitan Area Planning Commission

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

MINUTES

July 21, 2016

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, July 21, 2016 at 1:35 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Carol Neugent, Chair; David Dennis, Vice Chair (Out @2:35 p.m.); John Dailey, Bob Dool; Bill Ellison; David Foster; Matt Goolsby (Out @2:40 p.m.); Joe Johnson; John McKay Jr.; Debra Miller Stevens; Bill Ramsey (Out @2:40 p.m.); Lowell Richardson and John Todd. Members absent were: Chuck Warren. Staff members present were: Dale Miller, Director; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney; Justin Waggoner, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. Approval of the June 2, 2016 Planning Commission Minutes.

MOTION: To approve the June 2, 2016 Planning Commission minutes.

RICHARDSON moved, **JOHNSON** seconded the motion, and it carried (12-0-1).
MILLER STEVENS – Abstained.

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2016-00022: One-Step Final Plat – BELLE TERRE COMMERCIAL**

ADDITION, located on the on the north side of East Kellogg, west of 159th Street East.

NOTE: This is a replat of a portion of the Belle Terre South Addition. A zone change (PUD2016-00001) has been approved from Limited Commercial (LC) to Planned Unit Development (PUD).

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department requests the applicant extend water (distribution) and extend sewer (laterals). In lieu-of-assessment fees are due on transmission.
- B. The platlor's text references a drainage and utility easement not shown on the face of the plat.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) along with the corresponding dollar amounts shall be submitted to the Planning Department for recording.
- D. City Stormwater Management has approved the drainage plan. The plat shall state the minimum pad elevation for buildings on the site shall be at elevation 1305.0 (NAVD).
- E. Traffic Engineering has approved the access controls which are in accordance with the PUD approval. The plat denotes a right in/right out opening between Kellogg Drive and US-54 Highway. KDOT approval of the opening is needed prior to development. Dimensions are needed for all segments of access control.

- F. Traffic Engineering has required a guarantee for acceleration and deceleration lane improvements, and reconfiguration of Kellogg Drive to a frontage road.
- G. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- H. The plat shall label the future right of way as a contingent right of way dedication and referenced in the plat's text as being used by KDOT or the City of Wichita for the improvement of US-54/400 Highway (Kellogg).
- I. The 35-foot building setback should be measured from the contingent right of way dedication. The applicant shall meet with City Engineering regarding a setback for Lot 2.
- J. The plat's text shall be corrected to replace Reserve B with Reserve L, Belle Terre South Addition regarding construction of the frontage road.
- K. GIS requests that US-54 be labelled as US-54/400 HWY.
- L. County Surveying advises the legal description needs to include that portion of Kellogg Drive being replatted.
- M. County Surveying advises the bearing on Reserve L, Belle Terre South Addition of N 44°09'21" needs corrected to N 44°09'21" E.
- N. County Surveying advises the bearing on the northeasterly line of Reserve A of N 47°43'00" W was previously platted N 47°30'00" W.
- O. County Surveying advises the distance of 56.93 feet along the northeasterly line of Reserve B needs verified, that is along the line of Kellogg Drive being replatted, as said Kellogg Drive was platted 58 feet wide.
- P. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineers (USACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- Q. A cross-lot access easement is needed from Lot 1 to Lot 2.
- R. The plat's text references an emergency access opening to Kellogg which may be deleted.
- S. Provisions shall be made for ownership and maintenance of the proposed reserves. A restrictive covenant shall be submitted regarding ownership and maintenance responsibilities.

- T. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- U. "Lots, a Block, Reserves and Streets" shall be referenced in the plattor's text.
- V. The reserves shall be bounded with a solid line.
- W. The floodway and landscape buffer boundaries do not coincide with the PUD. A PUD adjustment shall be submitted denoted the revised floodway and landscape buffer, in addition to the revised building setbacks and display area.
- X. City Environmental Health Division advises that any wells installed on the property for irrigation purposes will have to be properly permitted, installed and inspected.
- Y. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to tricia.robello@sedgwick.gov and nstrahl@wichita.gov.
- Z. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- AA. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- BB. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- CC. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- DD. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- EE. Perimeter closure computations shall be submitted with the final plat tracing.
- FF. The applicant should check City or County GIS mapping to determine whether the location of any taxing district boundaries (e.g. school districts) crosses their property and plan accordingly to avoid unnecessary splitting of lots between taxing districts.
- GG. Westar Energy has requested additional easements. LaDonna Vanderford is the Construction Services Representative who will be the contact for this plat and can be reached at 316-261-6490. Any and all relocation and removal of any existing equipment made necessary by this plat will be at the applicant's expense.
- HH. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

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

DENNIS moved, MCKAY seconded the motion, and it carried (13-0).

2-2. SUB2016-00024: One-Step Final Plat – SUN-AIR ESTATES 2ND ADDITION,
located on the south side of 45th Street North, West of Webb Road.

NOTE: This is a replat of a portion of the Sun-Air Estates Addition creating five lots from two lots.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department requests the applicant extend water (distribution) and extend sewer (laterals). In-lieu-of-assessment fees are due on water (transmission) and sewer (mains).
- B. The plat's text shall include language that "No signs, light poles, private drainage systems, masonry trash enclosures or other structures shall be located within public utility easements."
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) along with the corresponding dollar amounts shall be submitted to the Planning Department for recording.
- D. City Stormwater Management has approved the drainage plan.
- E. The private street shall also be labelled as a Reserve and referenced in the plat's text. A 15-foot street, sidewalk, drainage and utility easement is needed adjoining the reserve.
- F. The plat's text shall reference, "Lots, a block, a street and a Reserve".
- G. The SS on the notary line needs moved up to the end of State of Kansas, County of Sedgwick.

- H. County Surveying advises a central angle needs added for the curve having a distance of 35.28 feet.
- I. County Surveying advises the Bearing N 0°00'00" W along the north line of the section needs corrected.
- J. County Surveying advises the distance of 2640.00 feet along the north line of the section needs corrected.
- K. The applicant shall guarantee the paving of the private street to a public street paving standard. As private improvements, such guarantee shall not be provided through the use of a petition.
- L. A restrictive covenant shall be submitted regarding the private street, which sets forth ownership and maintenance responsibilities. The plat's text shall reference the platting of the Reserve for private street purposes.
- M. A bold line is needed at the perimeter of the plat boundaries (south line of the street dedication).
- N. GIS has requested a street name for the private street.
- O. The Applicant has platted a 15-foot building setback which represents an adjustment of the Subdivision Regulation standards which requires a 20-foot front yard setback for the narrow residential street. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- P. City Environmental Health Division advises that any wells installed on the property for irrigation purposes will have to be properly permitted, installed and inspected.
- Q. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to tricia.robello@sedgwick.gov and nstrahl@wichita.gov.
- R. Since this plat proposes the platting of narrow street right of way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- S. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- T. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.

- V. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- W. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Y. Perimeter closure computations shall be submitted with the final plat tracing.
- Z. The applicant should check City or County GIS mapping to determine whether the location of any taxing district boundaries (e.g. school districts) crosses their property and plan accordingly to avoid unnecessary splitting of lots between taxing districts.
- AA. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- BB. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

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

DENNIS moved, MCKAY seconded the motion, and it carried (13-0).

3. **PUBLIC HEARING – VACATION ITEMS**

- 3-1. **VAC2016-0022: City request to vacate a portion of a platted drainage and utility easement on property**, generally located southeast of Rock Road and 29th Street North, west of Wilderness Circle on the west side of Wilderness Court (2607 N Wilderness Court).

- APPLICANT/AGENT:** Daryl A & Janice S Crofts (applicant/owner) Savoy Comp., PA, c/o Mark Savoy
- LEGAL DESCRIPTION:** Generally described as vacating an approximately 7.45 feet to 15.81 feet wide portion of a platted 40-foot drainage and utility easement located and running to the rear yard of Lot 2, Block 1, Wilderness 5th Addition, Wichita, Sedgwick County, Kansas (see exhibit and attached legal)
- LOCATION:** Generally located southeast of North Rock Road and East 29th Street North, west of Wilderness Circle on the west side of Wilderness Court (2607 N Wilderness Court5 - WCC II)
- REASON FOR REQUEST:** Build a swimming pool
- CURRENT ZONING:** The site and all abutting and the adjacent properties are zoned SF-5 Single-Family Residential.

The applicant is requested the vacation of an approximately 7.45 feet to 15.81 feet wide of the east portion of a platted 40-foot drainage and utility easement located and running to the rear yard of Lot 2, Block 1, Wilderness 5th Addition; see attached legal and exhibit. The Wilderness 5th Addition consists of two lots. A proposed pool is the reason for the vacation request. A portion of the subject easement is proposed to remain in in the 100-year Floodplain, as is the west abutting golf course, the result of the drainage of Middle Branch of Gypsum Creek being located in this area. The proposed pool itself does not appear to be located within the 100-year Floodplain. There is an existing pedestrian bridge located/encroaching in the west approximately 21 feet of the subject easement that is located almost entirely in the 100-year Floodplain. The bridge crosses over into the west abutting golf course. The north abutting property, Lot 22, Block 1, Wilderness 4th Addition, has a platted 20-foot utility easement that abuts the subject easement. There is no water or sewer utilities located in the subject easement. Stormwater has reviewed the request and has no objection. Westar has no objection to this request. Becky Thompson is the Construction Services Representative for the Westar Northeast Area has already worked with the applicant and helped obtain the letter included with this item from Westar Energy Real Estate Services. She is the contact for this vacation request and can be reached at 261-6320. The applicant has provided letters from Westar, AT&T, Cox Communication and an E-mail from Black Hills Energy that agree to allow the encroachment with the applicant agreeing to not to hold the utilities responsibly for damage to the pool or of the utility not having equipment in the area of the easement. These agreements will be recorded with the Register of Deeds and will run with the land. The Wilderness 5th Addition was recorded May 5, 1989.

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

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

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time June 30, 2016, 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 drainage and utility easement and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Review and approval by Stormwater-Public Works is required for the proposed pool and the existing bridge. This must be provided prior to VAC2016-00022 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) Provide a legal description of the vacated portion of the platted drainage and easement on a Word document via E-mail for the Vacation Order. This must be provided prior to VAC2016-00022 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) All improvements shall be according to City Standards and at the applicants' expense. Any relocation or removal of service due to this vacation request will be at the applicant's expense.
- (4) The applicant has provided letters from Westar, AT&T, Cox Communication and an E-mail from Black Hills Energy that agree to allow the encroachment with the applicant agreeing to not to hold the utilities responsibly for damage to the pool or of the utility not having equipment in the area of the easement. These agreements will be recorded with the Register of Deeds and will run with the land.
- (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) Review and approval by Stormwater-Public Works is required for the proposed pool and the existing bridge. This must be provided prior to VAC2016-00022 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) Provide a legal description of the vacated portion of the platted drainage and easement on a Word document via E-mail for the Vacation Order. This must be provided prior to VAC2016-00022 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) All improvements shall be according to City Standards and at the applicants' expense. Any relocation or removal of service due to this vacation request will be at the applicant's expense.
- (4) The applicant has provided letters from Westar, AT&T, Cox Communication and an E-mail from Black Hills Energy that agree to allow the encroachment with the applicant agreeing to not to hold the utilities responsibly for damage to the pool or of the utility not having equipment in the area of the easement. These agreements will be recorded with the Register of Deeds and will run with the land.
- (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.

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

- 3-2. **VAC2016-00023: City request to vacate a portion of a platted front setback on property,** generally located west of Edgemoor Drive on the south side of Central Avenue (5429 E. Central).

APPLICANT/OWNER: America's Drive-In Restaurants, LLC, c/o Wade Harden
(applicant/owner)

LEGAL DESCRIPTION: Generally described as vacating the south 15 feet of the platted 35-foot front yard setback located on and running parallel to the north property line of Lot 1, Ronald H Groves Addition, and Central Avenue, Wichita, Sedgwick County, Kansas

LOCATION: Generally located west of Edgemoor Drive on the south side of Central Avenue (5429 E. Central - WCC I)

REASON FOR REQUEST: New Sonic

CURRENT ZONING: The site and the abutting west and east properties are zoned LC Limited Commercial. Adjacent (across Central Avenue) north properties are zoned LC and NR Neighborhood Retail. Abutting south properties are zoned TF-3 Two-Family Residential

The applicant is requested the vacation of the south 15 feet of the platted 35-foot front yard setback located on and running parallel to the north property line of the LC Limited Commercial (“LC”) zoned Lot 1, Ronald H Groves Addition, and Central Avenue. Per the UZC the LC zoning district has a 20-foot minimum front yard setback. The applicant’s requests reduces the platted 35-foot setback to 20 feet. A previous vacation, V-2176, vacated the south 13 feet of a center portion of the subject setback; approved July 13, 1999. There are no public utilities located within the subject setback. Utility poles are located in the Central Avenue right of way. Westar has equipment in the right-of-way on the north line of this area along Central Avenue. Westar has no objection to this request as condition # 3 will cover Westar. However the applicant does need to maintain proper clearance, per the Service Standards advising the proper clearance information. Becky Thompson is the Construction Services Representative for the Westar Northeast Area and can be the contact for this vacation request. She can be reached at 261-6320. The Ronald H Groves Addition was recorded April 15, 1977.

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

- 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 June 30, 2016, 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 front yard setback and that the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Provide a legal description of the vacated portion of the platted front yard setback on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00023 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.

- (2) As needed provide easements for public and franchised utilities. As needed provide letters from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00023 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00023 proceeds to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (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 a legal description of the vacated portion of the platted front yard setback on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00023 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) As needed provide easements for public and franchised utilities. As needed provide letters from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00023 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00023 proceeds to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.

(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.

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

3-3. VAC2016-00024: City request to vacate portions of platted setbacks on property,
located on the northwest corner of Ridge Road and Maple Street (277 S. Ridge).

APPLICANT/AGENT: Maple & Ridge LLC, c/o John E Dugan (applicant/owner) PEC, c/o Charles Brown (agent)

LEGAL DESCRIPTION: Generally described as vacating the west and north 15 feet of the platted 35-foot front and street side yard setbacks located on and running parallel to the east and south property lines of Lot 2, Westview 3rd Addition, and Ridge Road and Maple Street, Wichita, Sedgwick County, Kansas

LOCATION: Generally located on the northwest corner of Ridge Road and Maple Street (277 S. Ridge – WCC V).

REASON FOR REQUEST: Construction of fuel canopy

CURRENT ZONING: The site and the abutting west and north properties and the adjacent south (across Maple Street) and east (across Ridge Road) properties are zoned LC Limited Commercial

The applicant is requested the vacation of the west and north 15 feet of the platted 35-foot front and street side yard setbacks located on and running parallel to the east and south property lines of the LC Limited Commercial (“LC”) zoned Lot 2, Westview 3rd Addition, and Ridge Road and Maple Street. Per the UZC the LC zoning district has a 20-foot minimum front yard setback and a 15-foot minimum street side yard setback. The applicant’s requests reduces the platted 35-foot setbacks to 20 feet. There is a platted triangular shaped drainage easement located in the southeast corner of the subject property. Stormwater conduit located in this platted drainage easement; the platted drainage easement will remain in effect. There are no public utilities located within the subject setback. Utility poles are located in the Ridge Road and Maple Street right of ways. Westar has equipment and lines along Ridge Road and

Maple Street. Westar has no objection to this request condition, as # 3 will cover Westar. However the applicant does need to maintain proper clearance, per the Service Standards advising the proper clearance information. Ennid Garcia is the Construction Services Representative for the Westar Southwest Area, will be the contact for this vacation request and can be reached at 261-6859. The Westview 3rd Addition was recorded August 11, 1981.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time June 30, 2016, 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 front yard and street side yard setbacks and that the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Provide a legal description of the vacated portion of the platted front and street side yard setbacks on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00024 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) As needed provide easements for public and franchised utilities. As needed provide letters from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00024 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00024 proceeds to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.

- (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 a legal description of the vacated portion of the platted front and street side yard setbacks on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00024 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) As needed provide easements for public and franchised utilities. As needed provide letters from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00024 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00024 proceeds to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (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.

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

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- 3-4. **VAC2016-00025: City request to vacate portions of platted setbacks, utility easements and the plattor's text on property,** generally located at the southeast corner of 21st Street North and Rock Road (2132 N. Rock).

APPLICANT/AGENT: BF Wichita LLC, c/o Amy Liebau (applicant/owner) MKEC Engineering, Inc, c/o Brian Lindebak

LEGAL DESCRIPTION: Generally described as vacating the east 25 feet of the platted 60-foot platted setback located on and running parallel to the east side of Lot 5, Block 1, the east 65 feet of the platted 100-foot platted setback located on and running parallel to the east side of Lot 3, Block 1, the platted 20-foot utility easement, except the east 45 feet, located on and running parallel to the north side of Lot 5, Block 1, the 20-foot by 20-foot utility easement located on the southwest corner of Lot 3, Block 1, and correcting the plat's text, all in the Bradley Fair Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located south of 21st Street North on the east side of Rock Road (2132 N. Rock – WCC II)

REASON FOR REQUEST: Future development

CURRENT ZONING: The site and the abutting north, east and south properties are zoned LC Limited Commercial and are located within Community Plan Overlays. The adjacent west properties (across Rock Road) are zoned LC and MF-18 Multi-Family Residential

The applicant is requesting the vacation of the east 25 feet of the platted 60-foot platted setback located on and running parallel to the east side of Lot 5, Block 1, the east 65 feet of the platted 100-foot platted setback located on and running parallel to the east side of Lot 3, Block 1, the platted 20-foot utility easement, except the east 45 feet, located on and running parallel to the north side of Lot 5, Block 1, the 20-foot by 20-foot utility easement located on the southwest corner of Lot 3, Block 1, and correcting the plat's text, all in the Bradley Fair Addition.

There are no platted easements in the described portions of the platted setbacks, except the subject easements that are proposed to be vacated. There do not appear to be public utilities located in the area of the vacation of the subject setbacks. The proposed vacation of the platted setbacks will leave 35-foot setbacks which is the minimum requirement for a Community Plan Overlay (CUP); the LC Limited Commercial (LC) zoned subject properties are part of CUP DP-191. The 35-foot setbacks exceeds the 20-foot minimum front yard building setback of the LC zoning district.

Stormwater appears to have a conduit and a manhole in the subject platted 20-foot utility easement, except the east 45 feet, located on and running parallel to the north side of Lot 5. The applicant has stated in their application that they will relocate utilities and provide easements for those relocated utilities. Westar has equipment and lines in the right of way located on the west side of this area along Rock Road. Westar has no objection to this request as condition # 5 will cover Westar. However, the applicant does need to maintain proper clearance, per the Service Standards advising the proper clearance information. Becky Thompson is the Construction Services Representative for the Westar Northeast Area, will be the contact for this vacation request. She can be reached at 261-6320.

The applicant is working with Kansas Gas Service to confirm the status of a gas line located in the subject platted 20-foot utility easement. Planning has provided several contacts with Kansas Gas Service to resolve the status of the gas line.

The change to the plat's text eliminates an access agreement located on Lots 4 and 3, Block 1, Bradley Fair Addition and introduces a new access agreement located on Lots 5 and 6, Block 1, Bradley Fair Addition. The Bradley Fair Addition was recorded July 16, 1993.

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

- 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 June 30, 2016, 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 portions of platted setbacks, utility easements and the plat's text and that the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate the east 25 feet of the platted 60-foot platted setback located on and running parallel to the east side of Lot 5, Block 1, the east 65 feet of the platted 100-foot platted located on and running parallel to the east side of Lot 3, Block 1, Bradley Fair Addition.
- (2) Review and approval by Public Works, and franchised utilities is required for the proposed vacation. Provided any needed plans for review and approval for the relocation of public and private utilities. This must be provided prior to VAC2016-00025 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Provide a legal description of the vacated portions of the platted easements on a Word document and an exhibit showing the approved vacated portions of the subject easements via E-mail for the Vacation Order. This must be provided prior to VAC2016-00025 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.

- (4) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00025 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (5) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00025 proceeds to the City Council for final action.
- (6) Vacated the plattor's text as shown on the exhibit. Provide a copy of the amended plattor's text on a Word document via E-mail for use in the vacation order. This must be provided to Planning prior to VAC2016-00025 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (7) Update CUP DP-191 to reflect the changes
- (8) All improvements shall be according to City Standards and at the applicants' expense.
- (9) 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) Vacate the east 25 feet of the platted 60-foot platted setback located on and running parallel to the east side of Lot 5, Block 1, the east 65 feet of the platted 100-foot platted located on and running parallel to the east side of Lot 3, Block 1, Bradley Fair Addition.
- (2) Review and approval by Public Works, and franchised utilities is required for the proposed vacation. Provided any needed plans for review and approval for the relocation of public and private utilities. This must be provided prior to VAC2016-00025 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.

- (3) Provide a legal description of the vacated portions of the platted easements on a Word document and an exhibit showing the approved vacated portions of the subject easements via E-mail for the Vacation Order. This must be provided prior to VAC2016-00025 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (4) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00025 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (5) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00025 proceeds to the City Council for final action.
- (6) Vacated the plattor's text as shown on the exhibit. Provide a copy of the amended plattor's text on a Word document via E-mail for use in the vacation order. This must be provided to Planning prior to VAC2016-00025 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (7) Update CUP DP-191 to reflect the changes.
- (8) All improvements shall be according to City Standards and at the applicants' expense.
- (9) 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.

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

3-5. VAC2016-00026: City request to vacate a platted wall easement on property,
generally located south of 37th Street North on the east side of Maize Road.

- OWNER/APPLICANT:** Tier 1, LLC, c/o Marvin Schellenberg
- LEGAL DESCRIPTION:** Generally described as vacating the platted 5-foot wide private wall easement running parallel to the south property line of Lot 1, Block 1, Stonebridge Commercial Addition, Sedgwick County, Kansas & eliminating the reference to the subject wall easement in the plattor's text
- LOCATION:** Generally located south of 37th Street North on the east side of Maize Road (WCC V)
- REASON FOR REQUEST:** Not needed
- CURRENT ZONING:** The site and all abutting north, east and south properties are zoned LC Limited Commercial. The adjacent west property, across Maize Road, is located in the City of Maize

The applicant proposes to vacate the platted 5-foot wide wall easement running parallel to the south property line of Lot 1, Block 1, Stonebridge Commercial Addition. Per the plattor's text the wall easement is for the construction and maintenance of a private wall and utilities may cross the wall easement. The plattor's text will be vacated to eliminate the reference to the subject wall easement. There is no wall located in the platted wall easement. Water and sewer lines and a platted drainage and utility easement pass through the east portion of the wall easement; the platted drainage and utility easement will remain in effect. Westar has no objection to this request as condition # 1 will cover Westar. Richard Aitken is the Construction Services Representative for the Westar Northwest Area and will be the contact for this vacation request. He and can be reached at 261-6320. The Stonebridge Commercial Addition was recorded with the Register of Deeds February 6, 2009.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time June 30, 2016, 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 portions of platted wall easement and the plattor's text and that the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Abandonment or relocation/reconstruction of any/all utilities, made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. As needed provide an approved private project plan number for the abandonment /relocation of public utilities. As needed provide approval from franchised utilities for the relocation of franchised utilities. All to be provided to the Planning Department prior to this case going to City Council for final action.
- (2) Provide Planning with any needed easements, with original signatures, for relocated utilities, prior to this case going to City Council for final action and subsequent recording with the Vacation Order at the register of Deeds.
- (3) Provide Planning with a legal description of the vacated portion of the platted wall easement on a Word document via E-mail that can be used on the Vacation Order. This must be provided to the Planning Department prior to this case going to City Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION

The Subdivision Committee recommends approval subject to the following conditions:

- (1) 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. As needed provide an approved private project plan number for the abandonment /relocation of public utilities. As needed provide approval from franchised utilities for the relocation of franchised utilities. All to be provided to the Planning Department prior to this case going to City Council for final action.
- (2) Provide Planning with any needed easements, with original signatures, for relocated utilities, prior to this case going to City Council for final action and subsequent recording with the Vacation Order at the register of Deeds.
- (3) Provide Planning with a legal description of the vacated portion of the platted wall easement on a Word document via E-mail that can be used on the Vacation Order. This must be provided to the Planning Department prior to this case going to City Council for final action.

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

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

MCKAY moved, **RICHARDSON** seconded the motion, and it carried (12-0-1).
FOSTER – Abstained.

- 3-6. **VAC2016-00027: City request to vacate easements dedicated by separate instruments on property,** generally located northwest of Kellogg Street and Washington Avenue, on the west side of the vacated Eldora Street.

APPLICANT/AGENT: BBS Real Estate LLC, c/o Keith Stevens (owner) Universal Motor Fuels Inc, c/o Dennis Maloney (applicant) Baughman Company, PA, c/o Phil Meyer

LEGAL DESCRIPTION: Generally described as vacating a 10-foot wide utility easement dedicated by separate instrument (Ordinance 11-499, Misc. Book 121, page 523) located on and running parallel to the east sides of Lots 17-21, Block 2, Santa Fe Addition, & the easement dedicated by separate instrument (Film 403, Page 625) located on and running parallel to portions of the south side of Lot 17, Block 2, Santa Fe Addition Wichita, Sedgwick County, Kansas (see exhibit and attached legal)

LOCATION: Generally located northwest of Kellogg Street and Washington Avenue, on the east side of the vacated Eldora Street (435 S El Dora Street – WCC I)

REASON FOR REQUEST: Construction of a loading dock and expanding entryway stairway

CURRENT ZONING: The site and abutting and the adjacent north and west properties are zoned CBD Central Business District. The adjacent south and east properties are zoned LI Limited Industrial

The applicant is requesting the vacation of a 10-foot wide utility easement dedicated by separate instrument (Ordinance 11-499, Misc. Book 121, page 523) located on and running parallel to the east sides of Lots 17-21, Block 2, Santa Fe Addition and the easement dedicated by separate instrument (Film 403, Page 625) located on and running parallel to portions of the south side of Lot 17, Block 2, Santa Fe Addition. There do not appear to be public utilities located in the subject easements. VAC2014-00055 vacated this portion of El Dora Street, which was retained as a utility easement.

Portions of the Gilbert-Mosley Groundwater Remediation System are located in the area of the vacation. There is no Gilbert-Mosley Groundwater Remediation System equipment in the subject easements. Westar has equipment and lines in Kellogg and Eldora Streets. Westar has no objection to this request as condition # 5 will cover Westar, however the applicant does need to maintain proper clearance, per the Service Standards advising the proper clearance information. Shane Price is the Construction Services Supervisor and will be the contact for this vacation request. Mr. Price can be reached at 261-6315. The Santa Fe Addition was recorded November 17, 1884.

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

- 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 June 30, 2016, 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 portions of the utility easements dedicated by separate instruments 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) Review and approval by Public Works, Environmental and franchised utilities is required for the proposed vacation. This must be provided prior to VAC2016-00027 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) Provide a legal description of the vacated portions of the easements recorded/dedicated by separate instruments on a Word document and an exhibit showing the approved vacated portions of the subject easements via E-mail for the Vacation Order. This must be provided prior to VAC2016-00027 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Provide copies of the 10-foot wide utility easement dedicated by separate instrument (Ordinance 11-499, Misc. Book 121, page 523) located on and running parallel to the east sides of Lots 17-21, Block 2, Santa Fe Addition and the easement dedicated by separate instrument (Film 403, Page 625) located on and running parallel to portions of the south side of Lot 17, Block 2, Santa Fe Addition.

- (4) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00027 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (5) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00027 proceeds to the City Council for final action.
- (6) All improvements shall be according to City Standards and at the applicants' expense.
- (7) 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) Review and approval by Public Works, Environmental and franchised utilities is required for the proposed vacation. This must be provided prior to VAC2016-00027 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) Provide a legal description of the vacated portions of the easements recorded/dedicated by separate instruments on a Word document and an exhibit showing the approved vacated portions of the subject easements via E-mail for the Vacation Order. This must be provided prior to VAC2016-00027 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Provide copies of the 10-foot wide utility easement dedicated by separate instrument (Ordinance 11-499, Misc. Book 121, page 523) located on and running parallel to the east sides of Lots 17-21, Block 2, Santa Fe Addition and the easement dedicated by separate instrument (Film 403, Page 625) located on and running parallel to portions of the south side of Lot 17, Block 2, Santa Fe Addition.

- (4) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00027 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (5) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00027 proceeds to the City Council for final action.
- (6) All improvements shall be according to City Standards and at the applicants' expense.
- (7) 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.

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

PUBLIC HEARINGS

4. **Case No.: ZON2016-00012 and CON2016-00007 (Deferred from April 21, 2016 and May 5, 2016)** - John & Linda Palmer and Brunswick Properties, LLC (owners/applicants) and Kaw Valley Engineering, c/o Tim Austin (agent) request a City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential to allow ancillary parking (CON2016-00007), an amendment to PO -300 to allow a restaurant and a 10% reduction of the compatibility setback on property described as:

Lot 3, Westview 2nd Addition, Wichita, Kansas, Sedgwick County, Kansas

Together with

The South 160 feet of Lot 9, Block D, Westview Addition, Sedgwick County, Kansas.

BACKGROUND: The subject site, located on the northwest corner of Brunswick and Maple Streets, currently has SF-5 Single-Family Residential (SF-5) zoning on its smaller north portion and NR Neighborhood Retail zoning (NR) with a Protective Overlay (ZON2015-00031 - PO #300) on its larger south portion. The applicants are requesting a zone change from SF-5 to TF-3 Two-Family Residential (TF-3) on the north 187.14-foot by 77-foot with a Conditional Use for ancillary parking. The Unified Zoning Code (UZC) allows consideration of ancillary parking as a conditional use on TF-3 zoned property; UZC. Sec.III-D.6.p.

The applicants are also requesting an amendment to the site's south NR zoned portion's PO: changing provision #1 to allow a 2,000-square foot restaurant with outdoor seating; changing provision # 2 to put in a six-foot tall masonry wall on the north side of the proposed TF-3 zoned property and add a six foot fence along the west property line of the TF-3 zoned portion, and; changing provision #3 to reduce the compatibility setbacks to 10 feet on the west side of the property. The original provisions of PO #300 are:

- (1) Permitted uses are an automated teller machine, a bank or financial institution, general office, personal care services, general retail, personal improvement services and medical offices.
- (2) The hedge like line of mature trees running parallel to the site's west property line shall be maintained or improved as needed to provide a solid landscape buffer. A line of six-foot tall (at the time of planting) evergreens shall be planted on 12-foot centers along the north property line. An eight-foot tall solid fence shall be installed south of the line of evergreens. The rest of the required landscaping shall be per the Landscape Ordinance.
- (3) Compatibility setback, height and light standards and all applicable Unified Zoning Code standards will apply to the development of the site. A drainage plan must be approved by the Public Works.
- (4) No parking or lighting within the rear and interior side yard setbacks.

In reference to the applicants' request to reduce the compatibility setbacks on the west side of the site, compatibility setbacks may be reduced or waived; UZC.V-I.2.d. Currently the NR zoned portion of the site has the full 25-foot compatibility setback on its west side, where it abuts SF-5 zoned single-family residences

The applicant's site plan shows an 8,775-square foot retail building with 59 parking spaces. No individual commercial use that is permitted by-right or as a conditional use within the NR District shall exceed 8,000 square feet of gross Floor Area. If the applicants were to have a permitted by right 2,000-square foot restaurant in the NR zoned portion of the site an approximate estimate of required parking could be 32 parking spaces for just the restaurant. This estimate is based on 45-square feet per seating area (as advised by MABCD) and subtracting a kitchen area of 500-600-square feet from a 2,000-square foot restaurant. However, this calculation does not include the seating or size of the outside patio/dining area. A mix of a 2,000-square foot restaurant and 6,000-square feet of retail (one space per 333-square feet) for the permitted 8,000-square foot building and would require an estimated 50 parking spaces, which the site plan exceeds.

The site plan shows a six-foot tall wooden fence with six-foot tall evergreens located behind the fence on the north line of the proposed ancillary parking. Staff recommends that the landscaping standard of PO #300's be applied to the north property line of the proposed ancillary parking with the exception that the recommended planting of evergreens can be inside or outside the site. The site plan also shows a drive onto Maple Street located on the south approximately 20 feet of the NR zoned portion of the site and two drives onto Brunswick off of both the south and north portions of the site.

SF-5 zoned neighborhoods abut the north and west sides of the subject site. The west abutting SF-5 zoned single-family residences (built in the early 1990s) are separated from the subject site's south portion by a hedge of mature trees and their subdivision's six-foot brick wall. None of the houses located west of the site have front yards facing Maple Street, and their back or interior side yards butt the subject site. A similar landscape buffer does not separate the north abutting SF-5 zoned single-family residences (built late 1970s) from the north portion of the subject site. A LC zoned small Horton's carpet store (built 1996), small commercial strip with gas pumps (built 1983) and an Outback full service restaurant (built 1999) are located east of the site, across Brunswick Street; Z-2337, Z-3162, and Z-3237. The 0.68-acre carpet store and 0.70-acre commercial strip sites present a similar scale of commercial development that could occur on the 1.03-acre subject site, if the conditional use is approved. South of the site, across Maple Street, are the LC and GC General Commercial zoned big box, 17.71-acre Lowes home improvement store (built 1998) and the LC zoned big box, 15.72-acre Target department store (built 2004); Z-3306/DP-37 and Z-3326, ZON2003-00055/DP-270. Lowes and Target are the two largest commercial developments located along the Ridge Road – Maple Street intersection, which includes full service restaurants, casual dining restaurants, furniture stores, commercial and strip buildings.

CASE HISTORY: The south portion of the site, the NR zoned south 160 feet of Lot 9, Block D, Westview Addition was recorded with the Register of Deeds on February 11, 1953. The north portion of the site, Lot 3, Westview 2nd Addition was recorded with the Register of Deeds on November 23, 1976. The subject site was annexed into the city between 1961 and 1970.

On October 6, 2015, the Wichita City Council approved ZON2015-00031, which rezoned the south 160 feet of Lot 9, Block D, Westview Addition from SF-5 to NR Neighborhood Retail with the provisions of Protective Overlay #300 (see background, second paragraph).

At the April 21, 2016, MAPC meeting the property owner requested a zone change from SF-5 to TF-3 Two-Family Residential with a conditional use for ancillary parking on their north property, Lot 9, Westview 2nd Addition and an amendment PO #300 on the their south NR zoned property. The applicant requested a deferral to discuss with the Traffic Engineer their proposal to have a drive onto Maple Street. There were protests at the MAPC meeting. The MAPC approved a deferral until the May 5, 2016 MAPC meeting (see attached minutes).

At the May 3, 2016, DAB V meeting the DAB voted 5-4 to deny the requested TF-3 zoning and the conditional use for ancillary parking and the amendments to PO #300 (see attached DAB memo)

At the May 5, 2016, MAPC meeting the applicant again requested a deferral and the MAPC granted an indefinite deferral (see attached minutes). There were protesters at the MAPC meeting.

ADJACENT ZONING AND LAND USE:

| | |
|---------------|---|
| NORTH: SF-5 | Single-family residences |
| SOUTH: LC, GC | Big box home improvement, big box retail |
| EAST: LC | Carpet sales, small commercial strip, convenience store, restaurant |
| WEST: SF-5 | Single-family residences |

PUBLIC SERVICES: The site is served by all normally supplied municipal services. The site has two access drives onto Brunswick Street, a paved two-lane local street which intersects with Maple Street, a paved four-lane arterial, with center-turn lanes at this location. The site currently has an access drive onto Maple Avenue dating from its previous use as a single-family residence built in 1948.

CONFORMANCE TO PLANS/POLICIES: The site is located just outside (separated by Ridge Road) the “Community Investments Plan’s” Established Central Area, which is comprised of the downtown core and the mature neighborhoods surrounding it in a roughly three mile radius. The Land Use Compatibility component of the Plan recommends that higher intensity development should be discouraged from locating in areas of existing lower –intensity development, particularly established low intensity residential areas. The subject site abuts urban single-family residential development on its north and west sides.

The Community Investments Plan’s “2035 Wichita Future Growth Concept Map” designates the site as “new employment.” The new employment designation encompasses areas that likely will be developed or redeveloped by 2035 with uses that constitute centers or concentrations of employment primarily in manufacturing, warehousing, distribution, construction, research, technology, business services, or corporate offices. In certain areas, especially those in proximity to existing residential uses, higher density housing and convenience retail centers likely will be developed. The subject site abuts urban scale single-family residential zoning on its north and west sides. The previously approved NR zoned portion of the site, subject to the provisions of PO#300 and the proposed TF-3 zoning with a Conditional Use for ancillary parking fits the just noted development projection of the new employment designation. The subject site’s current NR zoning and PO and the requested TF-3 zoning with a conditional use for ancillary parking serve as a buffer between the area’s LC and GC zoned businesses and the immediate earlier established single-family residential development, thus meeting the Plan’s “Development Pattern” guidelines for areas outside the Established Central Area.

Limiting access to the site to two drives onto the residential street Brunswick, facing LC zoned development and noting that the development is located on the northwest corner of the arterial Maple Street and Brunswick ensures that traffic to and from the site will be directed to the stop sign at that intersection. Eliminating the additional proposed drive onto Maple off of the site provides safer access to the site while minimizing the negative impact of the site’s traffic on the abutting single-family residential neighborhood, which meets the intent of the locational design guide lines of the Plan.

The Maple Street – Ridge Road intersection has experience redevelopment from single-family residential to commercial during the last, at least, two and a half decades. Most of the commercial development has happened south of this intersection, extending south a half-mile to Kellogg Street/Us Highway-54. Commercial development ends approximately 520 feet north of the Maple Street – Ridge Road intersection.

RECOMMENDATION: Approving the TF-3 zoning with a conditional use for ancillary parking on the subject site's north portion does not move commercial zoning further north, but may present an opportunity to make the subject site's NR south portion more marketable, as does allowing a restaurant. If approved, the ancillary parking would abut SF-5 zoned single-family residences/neighborhoods on its north and west sides. The proposed TF-3 zoning provides a buffer for the abutting north property, making a future request for commercial zoning more problematic. The subject site's NR zoned south portion and amending the PO to allow a restaurant allows very-low intensity retail and office development and other complementary land uses that serve and are generally appropriate near residential neighborhoods. Staff would not support a future request to expand commercial zoning to the north or the west and would be conflicted to support LC zoning on the NR portion of the site.

Based upon the information available prior to the public hearings, planning staff recommends that the TF-3 zoning and a conditional use for ancillary parking be **APPROVED** subject to the following conditions:

- (1) Six-foot tall evergreens (at the time of planting) shall be planted on 12-foot centers and a six-foot tall masonry wall shall be installed along the north property line of the TF-3 zoned conditional use for ancillary parking. The rest of the site shall conform to the Landscape Ordinance, including the recommended evergreens.
- (2) A six foot tall solid fence shall be installed along the west property line.
- (3) A 25-foot setback shall be located on the north and west property lines of the ancillary parking site. No pole lighting or parking shall be located within these setbacks
- (4) Pole lights shall be no taller than 15 feet, including the base.
- (5) A drainage plan shall be reviewed and approved by Stormwater.
- (6) The ancillary parking shall be developed in accordance with the supplemental use regulations found in Sec.III-D.6.p. as well as all applicable UZC standards and an approved site plan.
- (7) If the Zoning Administrator finds that there is a violation of any of the provisions or 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 the Conditional Use null and void.

Planning staff recommends that the following amendments to PO #300 be **APPROVED**:

- (1) Permitted uses in the NR zoned portion of the subject site are automated teller machine, bank or financial institution, general office, personal care service, general retail, personal improvement service, a medical office, and a 2,000-square foot full service restaurant with outside seating (no drive through windows or curb side service). The size of the commercial building in the NR zoned portion of the site is the permitted NR zoning district's total of 8,000 square feet of gross floor area.
- (2) The hedge like line of mature trees running parallel to the site's west property line shall be maintained or improved as needed to provide a solid landscape buffer. The rest of the required landscaping shall be per the Landscape Ordinance.
- (3) Compatibility setback, height and light standards and all applicable UZC standards will apply to the development of the NR zoned portion of the site.
- (4) A drainage plan must be reviewed and approved by Storm Water.
- (5) No parking or lighting within the interior side yard setbacks. No building lighting on the west side of any building on the subject site.
- (6) No signage on the west and north sides of the building located on the subject site.

- (7) Access to the subject site will be limited to one drive onto Brunswick Street and one drive onto Maple Street, as recommended by the Traffic Engineer.
- (8) No internal vehicular circulation between building located on the NR portion of the site and the west abutting SF-5 zoned single-family residential development.
- (9) The subject site including the ancillary parking site will developed as shown on an approved site plan.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood: SF-5 zoned neighborhoods abut the north and west sides of the subject site. The west abutting SF-5 zoned single-family residences (built in the early 1990s) are separated from the subject site's south portion by a hedge like line of mature trees and their subdivision's six-foot brick wall. None of the houses located west of the site have front yards facing Maple Street and their back or interior side yards butt the subject site. A similar landscape buffer does not separate the north abutting SF-5 zoned single-family residences (built late 1970s) from the north portion of the subject site. A LC zoned small Horton's carpet store (built 1996), small commercial strip with gas pumps (built 1983) and an Outback full service restaurant (built 1999) are located east of the site, across Brunswick Street; Z-2337, Z-3162, and Z-3237. The 0.68-acre carpet store and 0.70-acre commercial strip sites present a similar scale of commercial development that could occur on the 1.03-acre subject site, if the conditional use is approved. South of the site, across Maple Street, are the LC and GC General Commercial zoned big box, 17.71-acre Lowes home improvement store (built 1998) and the LC zoned big box, 15.72-acre Target department store (built 2004); Z-3306/DP-37 and Z-3326, ZON2003-00055/DP-270. Lowes and Target are the two largest commercial developments located along the Ridge Road – Maple Street intersection, which includes full service restaurants, casual dining restaurants, furniture stores, commercial and strip buildings.
- (2) The suitability of the subject property for the uses to which it has been restricted: The north portion of the subject site's current SF-5 zoning allows single-family residences, schools, churches, and parks and is appropriate for the urban residential category. The north portion of the subject site's one story lap siding and brick house's front yard faces Brunswick Street, a paved two-lane residential street, and the LC zoned small Horton's carpet store, small commercial strip with gas pumps and an Outback full service restaurant ; this orientation lessens the appeal of the site's single-family residence.
- (3) The site's NR zoned portion of the site with the provisions PO #300 allows very-low intensity retail and office development and other complementary land uses that serve and are generally appropriate near residential neighborhoods.
- (4) Extent to which removal of the restrictions will detrimentally affect nearby property: Approving the TF-3 zoning with a conditional use for ancillary parking amending the PO of the NR zoned portion of the site to allow a restaurant without drive through or curb side service would seem to have a minimal negative effect on the abutting single-family residential development.

- (5) Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The site is located just outside (separated by Ridge Road) the “Community Investments Plan’s” Established Central Area, which is comprised of the downtown core and the mature neighborhoods surrounding it in a roughly three mile radius. The Land Use Compatibility component of the Plan recommends that higher intensity development should be discouraged from locating in areas of existing lower –intensity development, particularly established low intensity residential areas. The subject site abuts urban single-family residential development on its north and west sides.
- (6) The Community Investments Plan’s “2035 Wichita Future Growth Concept Map” designates the site as “new employment.” The new employment designation encompasses areas that likely will be developed or redeveloped by 2035 with uses that constitute centers or concentrations of employment primarily in manufacturing, warehousing, distribution, construction, research, technology, business services, or corporate offices. In certain areas, especially those in proximity to existing residential uses, higher density housing and convenience retail centers likely will be developed. The subject site abuts urban scale single-family residential zoning on its north and west sides. The previously approved NR zoned portion of the site, subject to the provisions of PO#300 and the proposed TF-3 zoning with a Conditional Use for ancillary parking fits the just noted development projection of the new employment designation. The subject site’s current NR zoning and PO and the requested TF-3 zoning with a conditional use for ancillary parking serve as a buffer between the area’s LC and GC zoned businesses and the immediate earlier established single-family residential development, thus meeting the Plan’s “Development Pattern” guidelines for areas outside the Established Central Area.
- (7) Limiting access to the site to two drives onto the residential street Brunswick, facing LC zoned development and noting that the development is located on the northwest corner of the arterial Maple Street and Brunswick ensures that traffic to and from the site will be directed to the stop sign at that intersection. Eliminating the additional proposed drive onto Maple off of the site provides safer access to the site while minimizing the negative impact of the site’s traffic on the abutting single-family residential neighborhood, which meets the intent of the locational design guide lines of the Plan.
- (8) The Maple Street – Ridge Road intersection has experience redevelopment from single-family residential to commercial during the last, at least, two and a half decades. Most of the commercial development has happened south of this intersection, extending south a half-mile to Kellogg Street/Us Highway-54. Commercial development ends approximately 520 feet north of the Maple Street – Ridge Road intersection.
- (9) Impact of the proposed development on community facilities: With the recommended provisions for access controls, there will be minimal impact on community facilities.

BILL LONGNECKER, Planning Staff presented the Staff Report.

RICHARDSON asked about staff’s recommendation on the west compatibility setback – was it a 10% reduction or 10 feet.

LONGNECKER said staff's recommendation was to maintain the compatibility setback which was 25 feet. He said the applicant was requesting a 10% reduction of that. He said in addition staff was recommending that there will be no parking, no lighting and no internal circulation to the west.

RICHARDSON asked about the total number of entrances/exits.

LONGNECKER reiterated that on the original application staff did not want any access onto Maple Street; however, Traffic Engineering reconsidered and decided to allow access onto Maple Street in the hopes of cutting down traffic onto Brunswick. He said there will be one access onto Brunswick and one onto Maple Street.

RICHARDSON clarified that staff was recommending inclusion of the restaurant even though that was previously denied by the Planning Commission.

LONGNECKER explained that the Planning Commission did not deny the restaurant, the previous applicant's agent offered to eliminate that as a use.

RICHARDSON asked for information on the cul-de-sac or hammerhead on Brunswick.

LONGNECKER said since that was between the neighbors and the agent for the property owners and planning staff was not involved in that discussion, he would let the neighbors and the agent address that issue.

RICHARDSON asked about the chain link fence on Douglas.

LONGNECKER indicated that Douglas dead ends into a cul-de-sac which was for emergency access only, that was the purpose of the chain link at the location.

ELLISON asked about the fencing on the north side of the property.

LONGNECKER said the applicant volunteered a 6-foot masonry wall which is included in staff's recommendation.

TIM AUSTIN, KAW VALLEY ENGINEERING, 200 N. EMPORIA, AGENT FOR THE APPLICANT said they are in agreement with staff recommendations. He said the hammerhead idea was something that developed after discussion at the DAB meeting where neighbors expressed concerns about traffic and especially commercial traffic going north on Brunswick. He said they prepared some geometric concepts and visited with Mr. Gish (the neighbor directly to the north of the site) and asked him to circulate the proposal to his neighbors to see if there was any support for the idea. He said ultimately the neighbors did not support that idea. He said that was the reason for the second request to defer the item. He said they agreed to install a 6-foot masonry wall to the north and landscaping on the north side of the wall. He apologized for not having an updated site plan.

JASON GISH REPRESENTING HIS BROTHER JARED GISH, 227 N. BRUNSWICK who he said owns the property directly north of the site. He mentioned neighbors' concerns about the development and trying to place ancillary parking for a use that was previously pulled (a restaurant) in order to get the zoning approved on the property. He said to come back now and ask for a restaurant and put the parking adjacent to residential is unfortunate. He said this will have a great impact on the viability and value of that residential property. He mentioned restaurant employees getting off of work, being in the back for smoking breaks, listening to radios, lighting and a number of other issues. He said ancillary parking is not compatible in this area. He asked about the access point onto Brunswick and where that would be located. He said asking for ancillary parking at this location is a big game changer. He said if the applicants request is approved it will take more than a 6-foot wall and trees to mitigate the impact of this use. He concluded by mentioning that the screening and existing wall at Outback is not maintained and does not meet code. He mentioned that they realize those kinds of things are difficult to police and maintain by city staff. He said they believe this will create more erosion into a single-family neighborhood and not create any benefit.

RICHARDSON asked if there would be more support if there was not a restaurant in the proposal.

GISH replied that there would be more support if all the parking was not directly adjacent to residential zoning. He said it would be more ideal if the building could be moved further north on the site.

RICHARDSON said the building can't be moved unless the section was zoned NR.

ELLISON clarified that the neighbors don't want to block off the street with a cul-de-sac and want the building moved to the north.

GISH said the issue with a cul-de-sac was having the connection to Maple Street. He said moving the building to the north was something he came up with from an architectural standpoint but it is not a good use next to residential because of noise, lights, etc. He said had his brother known that his neighbor to the south would sell out he would have made provisions to look for a different place to live earlier.

RICHARDSON asked if the Commission could determine where the building is located on the site.

DIRECTOR MILLER said whatever the Commission thinks is appropriate and reasonable to make the site work.

KNEBEL commented that the TF-3 portion of the site was not advertised for rezoning so that would require a whole separate rezoning application process.

PAT O'BRYAN, 221 S. AND 101 S. BRUNSWICK said the neighborhood wants no entrances on Brunswick and no restaurant. He said the neighborhood already has a problem cleaning up the trash from Lowes. He said he keeps hearing about the "Quality of Life" on the City's television site but this proposal will just about kill it for this neighborhood. He mentioned making some "dog legs" but the developer said it was too expensive for him. He said this just boils down to whether you want to give the developer maximum profits or protect a little neighborhood that is being squeezed pretty hard. He concluded by saying that the cul-de-sac was mentioned haphazardly as a backup. He said he took that cheap, junk proposal around the neighborhood but a lot of people who live to the north like access onto Maple Street.

ELLISON said he doesn't know what the speaker means by a "cheap" cul-de-sac.

O'BRYAN said the hammerhead was towards Horton's, not on the developers property. He said the neighborhood felt it was ill conceived and not worth recommending.

ELLISON asked if additional screening on the north side of the property in the form of a masonry wall, more green area and a lot more trees would solve any problems.

O'BRYAN said that won't solve any problems if the Commission allows a restaurant or an entrance onto Brunswick.

DAILEY mentioned that the restaurant will not have a drive up window so he doesn't understand why it would generate trash.

O'BRYAN responded that this lot has been through three different zone changes. He said at first it was going to be for offices, but now they are talking about a restaurant. He asked once they get the restaurant, what is to stop them from making a change that allows a drive-thru window.

DAVID WOODROW, 140 S. BRUNSWICK said he had several points of contention. He said there are 18 restaurants along Ridge Road from the Outback to Kellogg. He asked, do we need another restaurant in this area at all. He referred to the site map and questioned how the large delivery vehicles were going to access it, unload and exit back out. He said that means they will be parking along Brunswick. He said that creates traffic flow problems and safety hazards for the area. He commented that there is a plot of ground in front of the Target store 300 feet to the west that is available for development.

AUSTIN asked the Commission to keep in mind that the lot is already approved for commercial use so it will generate a certain level of traffic regardless of whether a restaurant is there or not. He said there is already going to be commercial traffic. He said from his perspective it is a matter of intensity of use. He said there will be an incremental amount of traffic generated by a restaurant. He said restaurants are considered appropriate for NR zoning. He commented that his client was not the owner at the time that this property was rezoned. He said the agent at that time was trying to get a medical use on the property and offered up elimination of restaurant use as a point of compromise. He said as far as taking "multiple

bites of the apple” the Commission knows that happens and that is why they hold these hearings and have a process that allows that to happen. He said the proposed hammerhead was designed in accordance with City Subdivision Regulations and was on the client’s property. He said he understands that Mr. Gish (property owner directly to the north) has his home on the market and has a contract pending on it so he has made his decision. He said they would be willing to move the wall 10-15 feet and increase the green buffer between the properties.

RAMSEY asked if the client was aware that the zoning excluded restaurants when they purchased it.

AUSTIN replied yes.

DAILEY commented that he didn’t know where food vendor semi-trucks were going to unload at the location the way the site plan is set up.

AUSTIN commented that was an excellent question and added that the food delivery trucks were usually smaller than semis so the parking lot would be sufficient to handle that. He commented that his client bought this to create retail space because there is a lot of interest in this area but has received inquiries about a restaurant at the location.

RICHARDSON commented that he voted for this originally because the restaurant was eliminated as a use. He said since then the Commission has learned that the City has no control over restaurant odors so their only choice is to decide where restaurants can be built.

DENNIS (Out @2:35 p.m.)

MOTION: To approve subject to staff recommendation without the restaurant.

RICHARDSON moved, **FOSTER** seconded the motion.

LONGNECKER clarified that the request for TF-3 zoning with ancillary parking is specifically for the restaurant. He said if the restaurant is removed, there is enough parking on the NR site for the general retail.

RAMSEY asked then wouldn’t that just be a flat out denial.

LONGNECKER replied yes.

RAMSEY commented that when the Planning Commission first heard this case they specifically approved it without a restaurant. He said the previous case would not have been approved with a restaurant. He said he doesn’t think anything has really changed and the person who bought the property did it knowing that a restaurant was an excluded use.

TODD said he agreed with Commissioner Ramsey and commented that the client purchased the property knowing the limitations. He said this is a clear case that the surrounding property owners were there first.

SUBSTITUTE MOTION: To deny the application.

RAMSEY moved, **TODD** seconded the motion, and it carried (11-1-1). **GOOLSBY** – No; **DENNIS** – Abstained.

GOOLSBY and **RAMSEY** (Out @2:40 p.m.)

5. **Case No.: ZON2016-00025** - Cesar Morales (owner) and Jeff Niedens (agent) request a City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential on property described as:

Lot 24, Block 10, Orchard Park, Sedgwick County, Kansas.

BACKGROUND: The applicant requests TF-3 Two-Family Residential (TF-3) zoning on a 0.14-acre platted lot. The vacant, corner lot has 50 feet of frontage along North Mount Carmel Avenue and 135 feet of frontage along West 2nd Street. The applicant intends to develop a duplex on the site. The lot meets the Unified Zoning Code (UZO) minimum lot dimensions and size for a duplex in TF-3 zoning.

The surrounding neighborhood is primarily zoned SF-5 Single-family Residential (SF-5) and developed with single-family residences. However, over a dozen lots of TF-3 zoning exist within this neighborhood between Clara Street and Florence along W. 2nd Street. North of the site on W. 2nd are SF-5 and TF-3 zoned single- and two-family residences. East, south and west of the site are SF-5 zoned single-family residences.

CASE HISTORY: The site was platted as Lot 24, Block 10 of the Orchard Park Addition in 1929.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|------------|---|
| NORTH: | SF-5; TF-3 | Single-family and Two-family residences |
| SOUTH: | SF-5 | Single-family residences |
| EAST: | SF-5 | Single-family residences |
| WEST: | SF-5 | Single-family residences |

PUBLIC SERVICES: West 2nd Street is a paved, two-lane local street at this location with a 70-foot right-of-way. Baehr is a paved, two-lane local street at this location with a 60-foot right-of-way. All public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan encourages infill development within the Established Central Area that maximizes public investment in existing and planned infrastructure and services. The Plan also encourages development of a variety of lot sizes and housing types within the Established Central Area. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "residential," encompassing areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality.

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

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The surrounding neighborhood is primarily zoned SF-5 and developed with single-family residences. However, over a dozen lots of TF-3 zoning exist within this neighborhood between Clara Street and Florence along W. 2nd Street. North of the site on W. 2nd are SF-5 and TF-3 zoned single- and two-family residences. East, south and west of the site are SF-5 zoned single-family residences.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The vacant site is currently zoned SF-5 and could be developed with a single-family residence.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Impact on surrounding property due to the requested zone change should be minimal; duplexes and TF-3 zoning are common within the surrounding blocks. A duplex on the site could be better for the neighborhood than a vacant lot.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan encourages infill development within the Established Central Area that maximizes public investment in existing and planned infrastructure and services. The Plan also encourages development of a variety of lot sizes and housing types within the Established Central Area. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "residential," encompassing areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality.
- (5) **Impact of the proposed development on community facilities:** All services are in place. Any increased demand on community facilities can be handled by existing infrastructure.

KATHY MORGAN, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

RAMSEY moved, **RICHARDSON** seconded the motion, and it carried (13-0).

6. **Case No.: ZON2016-00028** - Masoud Etezazi (owner/applicant) and Conco, Inc., c/o Kyle Blasdel (agent) request a City zone change from B Multi-family Residential and SF-5 Single-family Residential to LC Limited Commercial on property described as:

Lot 1, except the north 10 feet thereof, and all of Lots 3, 5, 7, 9, 11, 13, 15, 17, 19, 21 and 23, on Guy, now Piatt Avenue, in Parkview Addition to Wichita, Kansas, Sedgwick County, Kansas.
TOGETHER WITH

Lot 2, except the north 10 feet thereof, and all of Lots 4, 6, 8, 10 and 12, on Sedgwick, now Minnesota Avenue, in Parkview Addition to Wichita, Kansas, Sedgwick County, Kansas.
TOGETHER WITH

Lot 1, Conway Addition to Wichita, Sedgwick County, Kansas, EXCEPT that portion platted as U.N.B. 2nd Addition, Wichita, Sedgwick County, Kansas.

CHAIR NEUGENT announced that the case was deferred until the August 18, 2016 Planning Commission Meeting.

7. **Case No.: ZON2016-00029** - Michael and Iris McCready (owners/applicants) request a City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential on property described as:

Lot 1, Maple Hill Addition, Sedgwick County, Kansas.

BACKGROUND: The applicants request a conditional use for an “accessory apartment” on the southeast corner of West platted SF-5 Single-Family Residential zoned lot located on the southwest corner of Maple Street and South Country View Lane. The site is developed with a 2,208-square foot single-story residence (built 1966) and a large garage. The applicant is converting a portion of the garage into an accessory apartment.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines an “accessory apartment” (Art. II.Sec. II-B.1.b) as a dwelling unit that may be wholly within, or may be detached from a principal single-family dwelling unit. Accessory apartments are also subject to supplementary use regulation Art. III.Sec.III-D.6.a (1) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling unit that may be within the main building, within an accessory building or constructed as an accessory apartment; (2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; (3) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold as a condominium and (4) the water and sewer service provided to the accessory apartment shall not be provided as separate service from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services.

The site is located in an area where Wichita and Sedgwick abut each other. The area the site is located in is zoned SF-5. SF-5 zoned single-family residences abut the south and west sides of the site. SF-5 zoned single-family residences are adjacent, across Country View Lane, to the east side of the site. The single-family residences in these areas were built in the mid to late 1960s up to as recently as 2007. SF-5, SF-20 Single-Family Residential and RR Rural Residential zoned properties are located north of the site, across Maple Street. Development in the area north of the site include partially developed urban scale subdivisions (recorded May 8, 2003 & March 15, 2006), two single-family residences (built 1978, 1986) on large tracts and agricultural land. An anomaly to the development in the area is a LC and SF-5 zoned recreational vehicle (RV) campground that may have been established in 1965.

CASE HISTORY: The subject property is described as Lot 1, Maple Hill Addition, which was recorded with the Register of Deeds January 5, 1965.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|-----------------|--|
| NORTH: | SF-5, SF-20, RR | Single-family residences, large tract single-family residences, agricultural land, RV campground |
| SOUTH: | SF-5 | Single-family residences |
| EAST: | SF-5 | Single-family residences |
| WEST: | SF-5 | Single-family residences |

PUBLIC SERVICES: The property is serviced by all publicly supplied municipal services. The site has access onto Country View Lane, a sand and gravel residential street. Country View Lane intersects with the paved, two-lane arterial Maple Street.

CONFORMANCE TO PLANS/POLICIES: The “2035 Wichita Future Growth Concept Map” shows the site and the area it is located in as “residential.” The residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to, single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, small parks and other similar residential- serving uses are located in these areas. The site is located outside of the established central area of Wichita. An accessory apartment may be considered as a conditional use in the SF-5 zoning district, which is a common request.

RECOMMENDATION: The surrounding area has well-established residential land uses. Based on information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the following conditions:

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

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located in an area where Wichita and Sedgwick abut each other. The area the site is located in is zoned SF-5. SF-5 zoned single-family residences abut the south and west sides of the site. SF-5 zoned single-family residences are adjacent, across Country View Lane, to the east side of the site. The single-family residences in these areas were built in the mid to late 1960s up to as recently as 2007. SF-5, SF-20 Single-Family Residential and RR Rural Residential zoned properties are located north of the site, across Maple Street. Development in the area north of the site include partially developed urban scale subdivisions (recorded May 8, 2003 & March 15, 2006), two single-family residences (built 1978, 1986) on large tracts and agricultural land. An anomaly to the development in the area is a LC and SF-5 zoned recreational vehicle (RV) campground that may have been established in 1965.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned SF-5 which permits the existing single-family residence. The SF-5 zoning is characteristic of the area's zoning. An accessory apartment may be considered as a conditional use in the SF-5 zoning district, which is a common request.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2035 Wichita Future Growth Concept Map" shows the site and the area it is located in as "residential." The residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to, single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, small parks and other similar residential-serving uses are located in these areas. The site is located outside of the established central area of Wichita. An accessory apartment may be considered as a conditional use in the SF-5 zoning district, which is a common request.
5. Impact of the proposed development on community facilities: If this request is approved, the site is served by municipal services that are able to accommodate projected demand created by this request.

KATHY MORGAN, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

RAMSEY moved, **RICHARDSON** seconded the motion, and it carried (13-0).

8. **Case No.: ZON2016-00030** - Nevets, Inc., and Manheim Auto Auctions (owner/applicant) and Ferris Consulting, c/o Greg Ferris (agent) request a City zone change from GC General Commercial to LI Limited Industrial for vehicle sales without paved parking/display on property described as:

Lot 1 except the East 40 feet and the South 90 feet and the point in Lot 1 described as 40 foot wide strip of land lying Easterly and parallel with abutting and perpendicular to West line of Lot 1, Rosson Addition; and the North 210 feet of Lot 2, Rosson Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting LI Limited Industrial (LI) zoning on the 1.91-acre, platted GC General Commercial (GC) zoned site located south of East Kellogg Street/US-54 Highway on the southeast corner of North Webb Road and East Orme Street. There is a 5,800-square foot warehouse office (built 1985) located on the site. The applicant is requesting LI zoning to allow auto sales on the site, which is permitted by right in the GC and LI zoning districts. However, the Unified Zoning Code (UZC) requires all parking, outdoor storage and display areas to be paved with concrete, asphalt or asphaltic concrete or any comparable hard surfacing material for car sales in the GC zoning district; UZC Sec.III-D.6.hh. There is no requirement for paving of outdoor storage and display areas in the LI zoning district. The 1.91-acre subject site's parking areas are paved except approximately the east 85 feet, thus the request.

The GC zoned subject site is currently an auto detail shop, Auto Boutique, which provides interior and exterior cleaning, minor dent repair, window repair, and similar services. The applicant, Manheim Auto Auctions (per their web site), is an international wholesale vehicle auction business (on-line or on-site), that also provides chip repair, auto body repair, partial bumper repair, paint-less dent repair, key replacement/locksmith services, pin striping, wet sand and buff, wheel repair, windshield repair, and windshield replacement. All of the current and proposed activities are permitted by right in the GC zoning district. Some Manheim sites also hold salvage auctions of inoperable vehicles and parts. The applicant has not indicated if the subject site would hold salvage auctions, which would require a conditional use in the LI zoning district.

The site is located in an area bordered by Kellogg Street on the north, I-35 on the south, Webb Road on the west and Greenwich Road on the east. The area is developed with large car sales lots, big box retail, commercial strips and stand-alone retail/commercial and the Beechcraft Aircraft manufacturing facility. The area is currently impacted by the construction of the Kellogg/US-54 improvements, which is targeted for completion in 2019-2020.

GC zoning is the predominate zoning in the area, except for approximately 11-acres of LI (ZON2015-00052/PO-307) undeveloped land, six SF-5 zoned single-family residences (built 1954 and early 1970s) and some LC Limited Commercial sites located by Greenwich Road. The more immediate area has a GC zoned partially occupied (Groves Liquor Store) retail box (built 1992), Discount Auto Sales (built 1970) and a body shop (built 1999) located north of the site, across Orme Street. The long established

(1940) LI zoned Beechcraft Aircraft manufacturing facility is located further north of the site, across Kellogg Street, as is the LI zoned Costco Store (built 2015). Beechcraft is the largest single-development in the area. A GC zoned collision repair shop (built 1980) abuts the south side of the site. I-35 is located south of the collision repair shop and a SF-5 Single-Family Residential (SF-5) zoned church is located south of I-35. A GC zoned office (built 2002) abuts the east side of the site, with vacant GC zoned property and a Pittsburg Paints warehouse (built 2007) located further east of the site. Webb Road abuts the west side of the site. There is an LI zoned retail store located on the west side of Webb Road. A Kansas Turnpike Authority (KTA) service and repair yard and buildings is also located west of the site within the Kellogg – I-35 interchange right of way

CASE HISTORY: The site is located on portions of Lots 1 and 2, Rosson Addition, which was recorded with the Register of Deeds May 16, 1978.

ADJACENT ZONING AND LAND USE:

NORTH: GC, LI Partially occupied big box retail with retail liquor store tenant, aircraft manufacturing facility, big box retail
SOUTH: GC, SF-5 Collision repair shop, I-35, church.
EAST: GC Office, vacant land, warehouse, car sales
WEST: LI Webb Road, retail building, KTA service and repair yard and buildings

PUBLIC SERVICES: All utilities are available to the site. Access to the site is provide by Orme Street, a paved two-lane, local street, which intersects with the paved four-lane arterial Webb Road.

CONFORMANCE TO PLANS/POLICIES: The “2035 Wichita Growth Concept Map” of the Comprehensive Plan identifies the general location as appropriate for “new employment” development. This category encompasses areas likely to be developed or re-developed by 2035 with uses that constitute centers or concentrations of employment primarily in manufacturing, warehousing, distribution, construction, research, technology, business services, or corporate offices. Major shopping centers and office parks are likely to be developed as well, based on market driven factors. Higher density housing and convenience centers are also development possibilities. In areas of existing industrial uses associated with extraction, processing or refinement of natural resources or recycling of waste materials like will be developed. There are no existing industrial uses associated with extraction, processing or refinement of natural resources or recycling of waste materials in this area. The area is developed with large car sales lots, big box retail, commercial strips, stand-alone retail/commercial and the Beechcraft Aircraft manufacturing facility.

The purpose of the LI zoning district is to accommodate moderate intensity manufacturing, industrial, commercial and complementary land uses. The requested LI zoning district can be compatible with the new employment classification. If approved the proposed LI zoning would meet for all practical purposes the locational criteria of industrial land having direct access to arterial roads, in this case the abutting four-lane arterial Webb Road via a short distance on the paved two-lane Orme Street. The requested LI zoning would allow the applicant to sale vehicles on an unpaved surface, a curious request considering that all of the 1.91-acre site is paved except for approximately the east 85 feet of the site. The requested LI zoning is partially in character with the area. The LI zoning does not allow wreacking and salvage nor the sale of wrecked vehicles or salvaged parts without conditional use approval.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the proposed LI zoning be **APPROVED**.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the surrounding area:** GC zoning is the predominate zoning in the area, except for approximately 11-acres of LI (ZON2015-00052/PO-307) undeveloped land, six SF-5 zoned single-family residences (built 1954 and early 1970s) and some LC Limited Commercial sites located by Greenwich Road. The more immediate area has a GC zoned partially occupied (Groves Liquor Store) retail box (built 1992), Discount Auto Sales (built 1970) and a body shop (built 1999) located north of the site, across Orme Street. The long established (1940) LI zoned Beechcraft Aircraft manufacturing facility is located further north of the site, across Kellogg Street, as is the LI zoned Costco Store (built 2015). Beechcraft is the largest single-development in the area. A GC zoned collision repair shop (built 1980) abuts the south side of the site. I-35 is located south of the collision repair shop and a SF-5 Single-Family Residential (SF-5) zoned church is located south of I-35. A GC zoned office (built 2002) abuts the east side of the site, with vacant GC zoned property and a Pittsburg Paints warehouse (built 2007) located further east of the site. Webb Road abuts the west side of the site. There is an LI zoned retail store located on the west side of Webb Road. A Kansas Turnpike Authority (KTA) service and repair yard and buildings is also located west of the site within the Kellogg – I-35 interchange right of way.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site's current GC zoning allows car sales by right, but requires the paving of parking, outdoor storage and display areas. The proposed LI zoning allows car sale by right but does not require requires the paving of outdoor storage and display areas. The applicant does not want to pay for the paving of outdoor storage and display areas on the east 85 feet of the site. The proposed LI is partially in character with the area's existing LI and GC zoning, although GC zoning is the predominate zoning on lands located south of Kellogg Street, such as the subject site.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The GC zoned Discount Auto Sales, located northeast of the site has vehicles, some in various stages of repair, some parked/stored on unpaved surfaces. Some Manheim sites also hold salvage auctions of inoperable vehicles and parts. The applicant has not indicated if the subject site would hold salvage auctions, which would require a conditional use in the LI zoning district.

- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** “2035 Wichita Growth Concept Map” of the Comprehensive Plan identifies the general location as appropriate for “new employment” development. This category encompasses areas likely to be developed or re-developed by 2035 with uses that constitute centers or concentrations of employment primarily in manufacturing, warehousing, distribution, construction, research, technology, business services, or corporate offices. Major shopping centers and office parks are likely to be developed as well, based on market driven factors. Higher density housing and convenience centers are also development possibilities. In areas of existing industrial uses associated with extraction, processing or refinement of natural resources or recycling of waste materials like will be developed. There are no existing industrial uses associated with extraction, processing or refinement of natural resources or recycling of waste materials in this area. The area is developed with large car sales lots, big box retail, commercial strips, stand-alone retail/commercial and the Beechcraft Aircraft manufacturing facility.

The purpose of the LI zoning district is to accommodate moderate intensity manufacturing, industrial, commercial and complementary land uses. The requested LI zoning would allow the applicant to sale vehicles on an unpaved surface, a curious request considering that all of the 1.91-acre site is paved except for approximately the east 85 feet of the site. The requested LI zoning is partially in character with the area. The LI zoning does not allow wreacking and salvage nor the sale of wrecked vehicles or salvaged parts without conditional use approval.

- (1) **Impact of the proposed development on community facilities:** The site may generate an additional amount of industrial truck traffic onto Orme Street, which allows access onto the four-lane arterial Webb Road.

BILL LONGNECKER, Planning Staff presented the Staff Report.

RICHARDSON asked if there was another way to do this such as a variance as opposed to introducing a whole new zoning.

LONGNECKER said staff did not consider this as a variance. He said the applicant asked for LI zoning specifically not to have to pave the area. He said he might ask the applicant.

RICHARDSON asked about vehicle sales to the north and east of this site.

LONGNECKER said he was he was not sure how they are doing what they are doing and added that he understands there have been complaints on the sites.

MILLER STEVENS asked if there were any signage issues.

LONGNECKER replied no. He added that the current business which is a detail shop is permitted by right in GC zoning.

JOHNSON asked if the Commission could look at this as a transitional use with a time limit.

JEFF VANZANDT, ASSISTANT CITY ATTORNEY indicated that the Commission couldn't put a time limit on a zone change. He said they could if it was a variance.

GREG FERRIS, FERRIS CONSULTING, AGENT FOR THE APPLICANT commented that they are not introducing anything new into the area. He said parts of the site are already zoned LI. He said the owner of this property owns a number of car lots in Wichita. He said they will sell vehicles in the paved area. He said they would like extra vehicle storage on the gravel lot. He said in his opinion this use was much easier to do as a zone change because a variance process usually addresses situations that are unusual; includes State Laws and five specific requirements need to be met. He said this area has a mix of GC and LI zoning. He said what they are asking for is completely in line with what is being done in the area. He concluded by saying that they agree with the Staff Report and feel this site meets the criteria for a rezone.

MOTION: To approve subject to staff recommendation.

ELLISON moved, **TODD** seconded the motion, and it carried (10-0).

9. **Case No.: ZON2016-00031** - TMR Partners, Attn: Samantha Allen (owner) requests a City zone change from SF-5 Single-family Residential to MF-18 Multi-family Residential on property described as:

Lots 33 and 35, on First Street, now Second Street. Walter Morris and Son's 3rd Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant requests MF-18 Multi-Family zoning on a 0.14-acre platted lot. The two single-family residences on the lot were built in 1919 (1502 W. 2nd) and 1920 (309 N. Elizabeth). The applicant intends to remodel/update the two structures on the lot. The lot meets the Unified Zoning Code (UZC) minimum lot dimensions and size for MF-18 zoning.

The surrounding neighborhood is primarily zoned SF-5 Single-family Residential (SF-5) and developed with single-family residences. However, lots within a five-block area are zoned MF-18. These properties are located south of W. 2nd between Martinson and Glenn.

CASE HISTORY: The site was platted as lots 33 and 35 of the Walter Morris & Sons 3rd Addition in 1922. Both residential structures pre-date the platting of the addition creating a non-conforming use in SF-5 zoning.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|------|--------------------------|
| NORTH: | SF-5 | Single-family residences |
| SOUTH: | SF-5 | Single-family residences |
| EAST: | SF-5 | Single-family residences |
| WEST: | SF-5 | Single-family residences |

PUBLIC SERVICES: West 2nd Street is a paved, two-lane local street at this location with a 70-foot right of way. North Elizabeth is a paved, two-lane local street at this location with a 60-foot right of way. All public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Wichita City limit and the Delano Area Plan. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "residential," encompassing areas that reflect the full diversity of residential development densities and types, including multi-family, typically found in large urban municipality. The site is located in the Delano Area Plan, which identifies the location for residential development and recommends redevelopment of original structures in the area.

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

This recommendation is based on the following findings:

- (6) **The zoning, uses and character of the neighborhood:** The surrounding neighborhood is primarily zoned SF-5 Single-family Residential (SF-5) and developed with single-family residences. However, lots within a five-block area are zoned MF-18. These properties are located south of W. 2nd between Martinson and Glenn.
- (7) **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned SF-5 and is a non-conforming use with two single-family residential structures. Re-zoning the property to MF-18 would remove the non-conformity.
- (8) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Impact on surrounding property due to the requested zone change should be minimal. The use of the subject property is not proposed to change, other than renovations to improve both houses.
- (9) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Wichita City limit and the Delano Area Plan. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "residential," encompassing areas that reflect the full diversity of residential development densities and types, including multi-family, typically found in large urban municipality. The site is located in the Delano Area Plan, which identifies the location for residential development and recommends redevelopment of original structures in the area.
- (10) **Impact of the proposed development on community facilities:** All services are in place. Any increased demand on community facilities can be handled by existing infrastructure.

KATHY MORGAN, Planning Staff presented the Staff Report.

FOSTER asked if staff considered a lot split.

MORGAN indicated that the lot was not big enough for a lot split. She said you would need 5,000 square feet for each lot.

JOHNSON asked how many units can be built on the site.

MORGAN indicated with MF-18 zoning, a total of 3 units maximum.

TODD clarified that the situation exists as a legal non-conforming use.

MORGAN replied yes.

SAMANTHA ALLEN, AGENT, TMR PARTNERS, 2020 WEST 21ST STREET NORTH said they are trying to insure that if something happens to one of these two houses they will have the financing to rebuild "as is." She said they want to keep these houses. She said they are old and wonderfully built and their current tenants love them. She said they are not wanting to build a triplex, quad-plex or anything similar on the property. She said they were unaware of the zoning issue when they purchased the homes and only became aware of a problem when then applied for refinancing.

MOTION: To approve subject to staff recommendation.

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

-
- 10. Case No.: CON2016-00019** - Homer Morgan Revocable Trust, c/o Homer Morgan, Trustee (applicant/owner) and Stephen M. Joseph (agent) request a City Conditional Use to permit a Tavern and Drinking Establishment and an Entertainment Establishment within 300 feet of residential zoning on property zoned LC Limited Commercial on property described as:

Lot 5 EXCEPT the East 17 feet for street thereof, Block 8, Parkwilde Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The application area, 511 North West Street, is located on the west side of North West Street and south of the West Central Avenue intersection in LC Limited Commercial (LC) zoning and within 300 feet of residential zoning. The site is developed with a one-story building and 30 off-street parking spaces. The County Tax Assessor lists "bar/tavern/lounge" as the current land use. The site currently has a drinking establishment license allowing the sale of alcohol to exceed 50% of gross sales. A drinking establishment has functioned on the site for many years. The current drinking establishment is permitted in LC zoning, but is legal non-conforming under the Unified Zoning Code (UZC) because it is within 300 feet of residential zoning. The applicant wishes to obtain an entertainment license and therefore requests this conditional use for a "nightclub in the city." Nightclub in the city is defined by the Unified Zoning Code (UZC) as an establishment that provides entertainment and/or dancing, where alcoholic beverages are served and where food may or may not be served. The UZC permits a nightclub in the city in the LC zoning district by right, but requires a conditional use if the property is located within 300 feet of a church, park, school or residential zoning district. The application area is adjacent to multi-family residential zoning and development west of the site. Duplex zoning and single-family residential development also exist within 300 feet southwest of the application area.

Property north of the site is zoned LC and developed with retail and restaurant uses. Property south of the site is zoned LC and developed with vehicle repair and a restaurant. Property east of the site is zoned LC and developed with printing, retail and restaurant uses. Property west of the site is zoned MF-29 Multi-family Residential (MF-29) and TF-3 Two-family Residential (TF-3) and developed with apartments and single-family residences.

CASE HISTORY: The site was platted as of Lot 5, Block 8 of the Parkwilde Addition to Wichita in 1887.

ADJACENT ZONING AND LAND USE:

| | |
|-------------------|--|
| North: LC | Neighborhood shopping center, retail, restaurant |
| South: LC | Vehicle repair, restaurant |
| East: LC | Printing, retail, restaurant |
| West: MF-29, TF-3 | Apartments, single-family residences |

PUBLIC SERVICES: North West Street is a paved arterial street with four lanes, a central turn lane and a signalized intersection at Central Avenue with additional turn lanes.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "new employment." The UZC requires one parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 100 people. The applicant's site plan demonstrates 30 parking spaces, 20 fewer than required. The applicant will require additional parking, which the site can accommodate. Or, the applicant could obtain a parking reduction through an adjustment or variance combined with additional on-site parking and/or a parking agreement with an adjacent property to meet the UZC parking requirement.

RECOMMENDATION: Staff notes that some form of drinking establishment has existed on this site for some time which does not appear to be incompatible with nearby residential uses. This application does not introduce a new use to the area. Staff notes that the site is screened and buffered with landscaping from nearby residential properties. Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a Nightclub in the City be **APPROVED**, with the following conditions:

- (1) The applicant shall meet the UZC parking requirements by providing additional parking on the site, obtaining a parking reduction, or securing an off-site parking agreement.
- (2) The applicant shall submit a revised site plan, to be approved by planning staff, which identifies required parking.
- (3) The site shall be developed and maintained in conformance with the approved site plan.
- (4) No outside loudspeakers or outdoor entertainment is permitted.
- (5) The site shall maintain all necessary licenses for a nightclub in the city.
- (6) The site shall conform to all applicable codes and regulations to include but not limited to zoning, building, fire and health.

- (7) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property north of the site is zoned LC and developed with retail and restaurant uses. Property south of the site is zoned LC and developed with vehicle repair and a restaurant. Property east of the site is zoned LC and developed with printing, retail and restaurant uses. Property west of the site is zoned MF-29 Multi-family Residential (MF-29) and TF-3 Two-family Residential (TF-3) and developed with apartments and single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC and developed with a drinking establishment. The site could continue to be a legal non-conforming drinking establishment without the nightclub conditional use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is zoned LC and could be developed with any range of permitted uses in that district. The proximity of residential zoning triggers the conditional use review for a nightclub. Noise and activity from the nightclub could impact nearby residences; proposed conditions prohibiting outdoor speakers and entertainment should mitigate this impact. The request does not introduce a new use in the neighborhood. The limited size of the site and building will prevent expansion beyond a neighborhood scale, and proposed conditions should mitigate impacts on surrounding properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would presumably be an economic hardship upon the property owner, as the applicant owns the property and desires to operate the proposed business within LC zoning.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "new employment." The UZC requires one parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 100 people. The applicant's site plan demonstrates 30 parking spaces, 20 fewer than required.
6. Impact of the proposed development on community facilities: The proposed Conditional Use should not impact community facilities to any greater extent other uses permitted in the LC zoning district.

SCOTT KNEBEL, Planning Staff presented the Staff Report. He reported that the DAB VI recommended unanimous approval of the application.

RICHARDSON asked why this was a legal non-conforming use now.

KNEBEL said this establishment existed prior to the zoning change requiring a conditional use when adjacent to residential zoning. He said they are continuing to apply for and receive drinking establishment permits. He said the entertainment license makes this a nightclub as opposed to just a drinking establishment. He said he understands they offer karaoke.

RICHARDSON asked what were the differences between a drinking establishment and a nightclub.

KNEBEL explained that a nightclub is a combination of a drinking establishment with entertainment.

RICHARDSON asked if that qualified this for adult entertainment.

KNEBEL replied no and added that adult entertainment and sexual oriented businesses are two different classifications.

STEPHEN JOSEPH, 500 NORTH MARKET, AGENT FOR THE APPLICANT, HOMER MORGAN said his client was in the process of upgrading all his properties to get them into conformance with City zoning. He said this establishment has been a bar for a very long time. He said there is no intent to do outside entertainment. He said they intend do expand the parking lot to provide the necessary parking to bring it into conformance with the UZC.

There was brief discussion between the requirements of the UZC and state licensing when it comes to drinking establishments versus nightclubs, bars and taverns.

MCKAY asked if the applicant agreed with staff comments.

JOSEPH replied yes.

MOTION: To approve subject to staff recommendation.

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

DOOL requested clarification that dancing is not adult entertainment.

11. **Case No.: CON2016-00020** - Homer Morgan Revocable Trust, c/o Homer Morgan, Trustee (applicant/owner) and Stephen M. Joseph (agent) request a City Conditional Use to permit a Tavern and Drinking Establishment and an Entertainment Establishment within 300 feet of residential zoning on property zoned LC Limited Commercial on property described as:

Lots 14 and 15, Lawrence Avenue, Hartle's Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The LC Limited Commercial (LC) zoned 0.33 acre platted subject property is generally located north of 13th Street North on the west side of Broadway at 1457 N. Broadway. Currently the south portion of a 2,628-square foot one-story commercial strip building (built 1950) that advertises itself as El Sombrero is located on the subject property. The subject property is currently vacant.

When a tavern, drinking establishment or nightclub is located within 300 feet of a church or place of worship, public park, public or parochial school or residential zoning district, approval of a Conditional Use is required; Unified Zoning Code (UZC), Sec.III-D6.w. TF-3 Two-Family Residential (TF-3) zoned properties are located approximately 55 feet west and 225 east of the subject property. There is no history of a Use Exception or Conditional Use for a tavern, drinking establishment or nightclub on the subject property. However, the applicant has stated that the subject property has been either a tavern, drinking establishment or nightclub most of its time (from 1955 to the present). The subject property's most recent drinking establishment license expired November 2, 2015, and prior to that time, a legal, non-conforming nightclub operated on the property. The applicant is applying for a Conditional Use for a nightclub to get the subject property in conformance with the UZC and to obtain a drinking establishment and entertainment license.

The applicant's site plan is an aerial and shows 19 marked parking spaces on the east side of the building. There is a paved parking lot without marked parking spaces on the west side of the building that could accommodate another seven (7) parking spaces, for a total of 26 parking spaces on the subject property. The proposed nightclub shares the 2,928-square foot one-story commercial strip building with a closed Chit Chat Wireless store. The occupancy of the nightclub is 40, and the retail space in the building occupies approximately 1,800 square feet. The parking requirement for the nightclub is 20 parking spaces (one space per two occupants), and six (6) parking spaces (one space per 333 square feet) are required for the retail space. Therefore, the 26 on-site parking spaces meet UZC parking requirements.

A variety of business along Broadway that are zoned LC and GC General Commercial (GC) and include restaurants, retail, offices, motels, vehicle repair, vehicle sales, and a mortuary, comprise the predominate development in the vicinity of the subject property. Residential areas located both east and west of the Broadway commercial corridor and are developed with a mixture of single-family, two-family, and multi-family residences zoned TF-3, MF-29 Multi-Family Residential (MF-29), and B Multi-Family Residential (B). A multi-use path abuts the west boundary of the subject property, and east of the subject property across Broadway is a vacant site currently under development.

CASE HISTORY: The subject property is platted as Lots 14 and 15 on Lawrence (now Broadway) Avenue, Hartle Addition, which was recorded March 3, 1910.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|----------|--|
| NORTH: | LC | Duplex, restaurant, retail |
| SOUTH: | LC | Restaurant, motel, mortuary, vehicle sales, vehicle repair |
| EAST: | LC, GC | Office, retail, vehicle sales, single-family, duplex, vacant |
| WEST: | LC, TF-3 | Multi-use path, single-family, duplex |

PUBLIC SERVICES: The subject property has access to the paved four-lane, arterial Broadway Avenue. Municipal utilities and public services currently serve the subject property.

CONFORMANCE TO PLANS/POLICIES: The “Community Investments Plan” shows the subject property located within the “Established Central Area.” This area is comprised of the downtown core and the mature neighborhoods surrounding it in a roughly three mile radius. The established central area is the focus area for the Wichita Urban Infill Strategy. The established central area encourages a mixed-use development area with a focus on office, retail, hospitality, government services, high-density residential, and entertainment, cultural, and civic facilities and activities. A nightclub is an entertainment facility.

The “Community Investments Plan 2035 Wichita Future Growth Map” depicts the subject property as “commercial.” The commercial designation encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with, residential uses. A nightclub is an appropriate use of the commercial designation.

The “Midtown Neighborhood Plan 2020 Future Land Use Concept” depicts the subject property as “mixed-use” and identifies as the main commercial corridor/district of the neighborhood. A nightclub is an appropriate use in a main commercial corridor.

RECOMMENDATION: A legal, non-conforming nightclub has operated on the subject property for many decades. The applicant is applying for a Conditional Use for a nightclub to get the subject property in conformance with the UZC and to obtain a drinking establishment and entertainment license. Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, with the following conditions:

- (1) The nightclub shall be limited to an occupancy of 40 persons, exclusive of an outdoor seating area as permitted by Sec. III-D.6.w. of the UZC.
- (2) No outdoor speakers or outdoor entertainment is permitted.
- (3) The site shall be developed in conformance with a revised site plan approved by planning staff. The site plan shall depict, at a minimum, the occupancies contained on the subject property; the required parking spaces; the trash dumpster and screening enclosure; and the outdoor seating/smoking area. The site plan must be submitted for review within 60-days of approval of the Conditional Use.
- (4) The site shall maintain all necessary licenses for a nightclub in the city.
- (5) The site shall conform to all applicable codes and regulations to include but not limited to zoning, building, fire, and health.
- (6) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** A variety of business along Broadway that are zoned LC and GC General Commercial (GC) and include restaurants, retail, offices, motels, vehicle repair, vehicle sales, and a mortuary, comprise the predominate development in the vicinity of the subject property. Residential areas located both east and west of the Broadway commercial corridor and are developed with a mixture of single-family, two-family, and multi-family residences zoned TF-3, MF-29 Multi-Family Residential (MF-29), and B Multi-Family Residential (B). A multi-use path abuts the west boundary of the subject property, and east of the subject property across Broadway is a vacant site currently under development.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned the LC, which is meant to accommodate retail, commercial, office and other complementary uses. If approved, the request would establish a nightclub as conforming use to the UZC on the site.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Typical concerns about tavern/drinking establishment/nightclub include bad behavior resulting from unlimited liquor sales, the noise from music and dancing, and the hours of the nightclub having a detrimental impact on the residential neighborhood. The subject property is located along the Broadway commercial corridor and is buffered from residential areas by a multi-use path, which should mitigate detrimental impacts on nearby properties.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “Community Investments Plan” shows the subject property located within the “Established Central Area.” This area is comprised of the downtown core and the mature neighborhoods surrounding it in a roughly three mile radius. The established central area is the focus area for the Wichita Urban Infill Strategy. The established central area encourages a mixed-use development area with a focus on office, retail, hospitality, government services, high-density residential, and entertainment, cultural, and civic facilities and activities. A nightclub is an entertainment facility.

The “Community Investments Plan 2035 Wichita Future Growth Map” depicts the subject property as “commercial.” The commercial designation encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with, residential uses. A nightclub is an appropriate use of the commercial designation.

The “Midtown Neighborhood Plan 2020 Future Land Use Concept” depicts the subject property as “mixed-use” and identifies as the main commercial corridor/district of the neighborhood. A nightclub is an appropriate use in a main commercial corridor.

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

SCOTT KNEBEL, Planning Staff presented the Staff Report. He reported that DAB VI recommended unanimous approval of the application.

STEPHEN JOSEPH, 500 NORTH MARKET, AGENT FOR THE APPLICANT, HOMER MORGAN said parking was discussed at development review and they will comply with staff recommendations. He said this has been a neighborhood bar for as long as anyone can remember so it is a legal non-conforming use. He said his client is attempting to get all of his properties into conformance with zoning requirements through the conditional use process.

MOTION: To approve subject to staff recommendation.

RICHARDSON moved, **ELLISON** seconded the motion, and it carried (10-0).

-
12. **Case No.: CUP2016-00022** - Sundance Kansas Associates, LLC (applicant) and Robert Kaplan (agent) request a City CUP Major Amendment to DP-62 to increase the permitted residential density on Parcel 8 on property described as:

That part of Lot 4, Block 1, E.E. Jabes Addition to Wichita, Sedgwick County, Kansas described as follows: Beginning at the northwest corner of said Lot 4; thence N89°12'17"E along the north line of said Lot 4, 626.79 feet to the northeast corner of said Lot 4; thence S00°33'13"E along the east line of said lot 4, 196.35 feet to a deflection corner in said east line; thence S22°21'18"E along the east line of said Lot 4, 53.85 feet to a deflection corner on the said east line; thence S00°33'13"E along the east line of said Lot 4, 84.00 feet; thence S89°25'46"W, 185.68 feet; thence S77°31'43"W, 199.18 feet; thence S24°25'00"W, 55.10 feet; thence S89°12'49"W, 241.19 feet to a point on the west line of said Lot 4; thence N00°47'43"W along the west line of said Lot 4, 419.87 feet to the point of beginning.

CHAIR NEUGENT announced that the case was deferred indefinitely.

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13. **Case No.: CUP2016-00023** - Menard, Inc., c/o Tyler Edwards (owner) and MKEC Engineering, Inc., c/o Brian Lindebak (agent) request a City CUP Amendment to DP-295 to increase the size of an accessory structure with a 35-foot setback on property described as:

Reserve A, TOGETHER WITH, Lot 11, Block 1, Stonebridge Commercial Addition, an addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The LC Limited Commercial (LC) and GC General Commercial (GC) zoned site is located within DP-295, the Stonebridge Community Unit Plan (CUP) at the southeast corner of West 37th Street North and North Maize Road. The application area is developed with a Menard's Home Improvement store and an associated accessory storage structure used for lumber. The applicant requests various modifications to DP-295 Parcels 11a and 11b. The CUP currently limits the size of an accessory storage building on Parcel 11b, with a 35-foot setback, to 30,001 square feet. The applicant intends to increase the size of this building by over 40%, and requests to eliminate the size limitation.

The accessory structure will maintain the 35-foot building setback and 45-foot height limit. The applicant requests to eliminate the Parcel 11a and 11b limit of a maximum of five buildings each, the maximum building coverage of 30% and floor area ratio of 0.30 remains the same. The applicant also requests to clarify parking standards language (see the applicants attached letter and draft CUP document) which is generally consistent with the current Unified Zoning Code (UZC), as the UZC parking standards were reduced after this CUP was created.

The existing DP-295 has building setbacks, landscaping, signage, lighting, trash screening, perimeter wall screening and other standards. The remainder of the CUP is zoned LC and developed primarily with restaurant and convenience store uses. The northeast and southwest corners of West 37th Street North and North Maize are in the City of Maize and developed with retail, banking, storage and government uses. The northwest corner of West 37th Street North and North Maize is zoned LC, under DP-262, and developed with a medical office. Land located south of the site is zoned LC, under DP-330, and is developing with multi-family residences. East of the site is an SF-5 Single-family Residential zoned Maize school site.

CASE HISTORY: The property is platted as Northborough Addition, recorded in 2009, the CUP was originally approved in 2009. It has been amended once and adjusted three times.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|---------------|----------------------------------|
| NORTH: | City of Maize | University branch |
| SOUTH: | LC | Vacant, multi-family residential |
| EAST: | SF-5 | Schools |
| WEST: | City of Maize | Retail, banking, self-storage |

PUBLIC SERVICES: The property has direct access to Maize and 21st Street, both are four-lane arterial streets with turn lane improvements. The Maize and 21st Street intersection has center and right turn lanes.

CONFORMANCE TO PLANS/POLICIES: The site is subject to the recommendations contained in the adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "New Employment" which encompasses areas that likely will be developed or redeveloped by 2035 with uses that constitute centers or concentrations of employment primarily in manufacturing, warehousing, distribution, construction, research, technology, business services or corporate offices. Major shopping centers and office parks likely will be developed within this area as well, based upon market driven location factors. In certain areas, especially those in proximity to existing residential uses, higher density housing and convenience retail centers likely will be developed. The Locational Guidelines of the Comprehensive Plan encourage major commercial development at arterial street intersections. This application meets the Comprehensive Plan Land Use Compatibility and Design recommendations regarding screening, buffering, shared internal vehicular and pedestrian circulation, access controls, noise and lighting controls and aesthetic considerations.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request for an amendment to DP-295 Parcels 11a and 11b as requested 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 existing DP-295 has building setbacks, landscaping, signage, lighting, trash screening, perimeter wall screening and other standards. The remainder of the CUP is zoned LC and developed primarily with restaurant and convenience store uses. The northeast and southwest corners of West 37th Street North and North Maize are in the City of Maize and developed with retail, banking, storage and government uses. The northwest corner of West 37th Street North and North Maize is zoned LC, under DP-262, and developed with a medical office. Land located south of the site is zoned LC, under DP-330, and is developing with multi-family residences. East of the site is an SF-5 Single-family Residential zoned Maize school site.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC with DP-295 development controls. The accessory storage structure on Parcel 11b cannot be expanded without the requested amendment.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed amendment should have no impact on nearby property as the expanded storage building will still retain a 35-foot setback and 45-foot height limit.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The site subject to the recommendations contained in the adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plans*. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "New Employment" which encompasses areas that likely will be developed or redeveloped by 2035 with uses that constitute centers or concentrations of employment primarily in manufacturing, warehousing, distribution, construction, research, technology, business services, or corporate offices. Major shopping centers and office parks likely will be developed within this area as well, based upon market driven location factors. In certain areas, especially those in proximity to existing residential uses, higher density housing and convenience retail centers likely will be developed. The Locational Guidelines of the Comprehensive Plan encourage major commercial development at arterial street intersections. This application meets the Comprehensive Plan Land Use Compatibility and Design recommendations regarding screening, buffering, shared internal vehicular and pedestrian circulation, access controls, noise and lighting controls and aesthetic considerations.
- (5) **Impact of the proposed development on community facilities:** The requested CUP amendment should have minimal or no impact on community facilities.

SCOTT KNEBEL, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

RAMSEY moved, RICHARDSON seconded the motion, and it carried (13-0).

NON-PUBLIC HEARING ITEMS

14. Case No.: Conformity of the Proposed 2017-2021 Sedgwick County Capital Improvement Program with the Community Investments Plan

Background: On July 7, 2016, the Advance Plans Committee received a presentation on the proposed 2017-2021 Sedgwick County Capital Improvement Program (CIP). The Advance Plans Committee subsequently passed a motion (4-0) recommending that the MAPC find the proposed 2017-2021 Sedgwick County Capital Improvement Program to be in substantial conformity with the Community Investments Plan 2015-2035.

Analysis: Section 12-748 of Kansas statutes requires a planning commission to review the capital improvement program of its municipality to make a finding as to whether the proposed public improvements, public facilities or public utilities conform to the adopted comprehensive plan. If the planning commission finds that any such proposed public improvement does not conform to the plan, the commission shall submit in writing to the governing body, the manner in which such improvement does not conform.

Staff has reviewed the proposed 2017-2021 Sedgwick County Capital Improvement Program and has determined that the capital improvements proposed therein substantially conform with several important plan guiding principles and infrastructure spending priorities contained in the recently adopted Community Investments Plan 2015-2035.

Recommended Action: That the Metropolitan Area Planning Commission find the proposed 2017-2021 Sedgwick County Capital Improvement Program to be in substantial conformity with the adopted Community Investments Plan 2015-2035, being the Wichita-Sedgwick County Comprehensive Plan.

JIM WEBER, DEPUTY DIRECTOR, SEDGWICK COUNTY PUBLIC WORKS gave a brief presentation on the County 2017-2021 Capital Improvement Program. He reviewed current road and bridge inventory and signs. He said the three categories of CIP projects were maintenance, enhancement and expansion. He discussed preventative maintenance scheduling and detailed budget projections and the status of current and future road work, bridge repair and drainage projects. He gave details and budget information on several projects including the Northwest Bypass and KDOT funding of the project which was originally 2-1 but has decreased to 1-1; a WAMPO study that recommended a parkway on the south end of the City which included a bridge over the Arkansas River; and the bike path system including a sidewalk/bike path connecting to base housing at McConnell.

WEBER referred to the financial summary which detailed graphs and charts indicating when monies were scheduled to be spent and on which projects.

WEBER briefly reviewed goals of the Community Investment Plan and how the proposed CIP has met or intends to meet those goals.

DAILEY asked what was the point of a 10-foot wide side walk as opposed to a 6-8 foot wide sidewalk.

WEBER reported that if federal funds are involved in a project, 10 feet is the standard requirement. He added that if it is an active pathway or sidewalk you need room to pass without bumping someone off the path.

RICHARDSON asked about funding for the Northwest Bypass and asked how long it is going to take to acquire the right of way for the project.

WEBER said the \$2.6 figure was the five year total. He added that Goddard and Maize are minor players but are still in the game. He explained that when the route and layout for the Bypass was identified, a Protective Overlay was created. He said if you own property in that PO and you come to the County for a building permit, that triggers an alarm and KDOT gets in touch with the individual to inform them that their investment may be in jeopardy in the future and possibly purchase the property from the individual now. He commented that on some projects, more money has been spent on acquiring right of way than on the road improvements themselves. He also mentioned sales on hardship cases. He estimated they are about one third of the way through the process now and added that at some point when KDOT decided it is worth it they are going to have to put more money into it.

RICHARDSON clarified that they are opportunity purchases.

MOTION: That the 2017-2021 Sedgwick County Capital Improvement Program was in substantial conformity with the adopted Community Investments Plan 2015-2035.

JOHNSON moved, **TODD** seconded the motion.

FOSTER mentioned the \$9-\$10 billion dollar deficit identified in the Community Investment Plan. He said the Northwest Bypass and 95th Street South were not given much consideration. He asked about the discussion behind allocating \$3-4 to promote those projects.

WEBER commented that KDOT still thinks the Northwest Bypass is important and are still investing in it. He said in his opinion he believes because KDOT manages the highway system for the entire State of Kansas, they have a different prospective than just thinking locally. He suggested it was a disconnect in the different levels of planning.

KNEBEL commented that Commissioner Foster was referencing what the Steering Committee recommended and the Planning Commission adopted. He said the Plan adopted by the County Commission put a higher priority on the Northwest Bypass and the City went along with that change to the Plan.

WEBER said as far as 95th Street is concerned, he agreed that was a massive investment. He said he believes there is a need for another crossing over the Arkansas River down south within the next 10-15 years. He said they have not programmed anything west of Meridian. He concluded by stating that since the economic crash of 2008, they have had to go back and relook at some projects.

MCKAY commented that KDOT came to the City and requested the Kellogg project.

TODD said this does provide an opportunity to buy land at cheaper prices than if this was already improved.

CHAIR NEUGENT asked about the rationale behind reducing the preventative maintenance budget. She commented that it seemed like an odd place to take money.

WEBER said the conversation is about what is an appropriate maintenance cycle. He said some say a 5-year cycle and others think it should be longer. He said by lengthening the cycle the County can save money. He said they are trying to find the balancing point and right now they are thinking it is in the 5-7 year range.

The **MOTION** carried (10-0).

15. **Case No.: DER2016-00005** - Establish a Public Hearing date of August 18, 2016 for DER2016-00005 dealing with a number of amendment to the "Wichita-Sedgwick County Unified Zoning Code". The proposed amendments deal with event centers in the County, churches, farmer's markets and bed and breakfast uses in certain zoning district.

FOSTER referenced some conflicting information on page 26 regarding the Supplemental Use Regulations. He commented that the idea of permitting event centers by right in RR seems irresponsible to him. He mentioned two examples of an air strip and gun shooting range. He said he will bring it up in more detail at the public hearing.

MOTION: To set August 18, 2016 as a public hearing date for amendments to the UZC.

MCKAY moved, **JOHNSON** seconded the motion, and it carried (9-1). **FOSTER** – No.

NON-PUBLIC HEARING ITEM

KNEBEL referenced rescinding Policy Statement #5 which required platting within one year for approval of a zone change. He said a number of cases were approved prior to rescinding of that policy. He said Policy #5 allowed staff to grant platting extensions. He said what staff is proposing is when someone seeks an extension, staff would forward an ordinance to the governing body for approval of the zoning on the property and change the zoning map.

MCKAY clarified that the previously approved zoning properties were not on the zoning map. He asked can't staff just go to the governing body with a list.

KNEBEL commented that given the current caseload, he does not believe the Planning Department has the resources to prepare that kind of list.

MOTION: To take staff recommendation.

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

FOSTER asked about fees to the applicant. He clarified that the goal was to get all the approved zoning on the map.

KNEBEL said there was a fee for a platting extension and that is what staff intends to charge. He added that there is some paperwork and staff expenses associated with processing the paperwork.

The Metropolitan Area Planning Commission adjourned at 3:55 p.m.

State of Kansas)
Sedgwick County) ss

I, W. Dale Miller, 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 _____, 2016.

Dale Miller, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

MINUTES

August 4, 2016

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, August 4, 2016 at 1:35 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Carol Neugent, Chair; David Dennis; Vice Chair; John Dailey; Bill Ellison; David Foster; Joe Johnson (Out @3:25 p.m.); Debra Miller Stevens; Bill Ramsey (Out @3:35 p.m.); John Todd and Chuck Warren. Members absent were: Bob Dool; Matt Goolsby; John McKay Jr.; and Lowell Richardson. Staff members present were: Dave Barber, Advance Plans Manager; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney; Justin Waggoner, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. Approval of the June 16, 2016 Planning Commission Minutes.

MOTION: To approve the June 16, 2016 Planning Commission minutes.

JOHNSON moved, **TODD** seconded the motion, and it carried (6-0-4). **DENNIS, ELLISON, RAMSEY, WARREN** – Abstained.

2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

- 2-1. **SUB2016-00011; One-Step Final Plat – KANSAS HYDROGRAPHICS ADDITION,** located on the north side of East 47th Street South, west of South Woodlawn Boulevard.

NOTE: This is unplatted property located in the County within three miles of the City of Wichita. It is designated as “Wichita Urban Growth Area” by the Community Investments Plan 2015-2035. The site is located within the Air Force Base Protection Overlay District (AFBP-O).

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact Metropolitan Area Building and Construction Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Sedgwick County Rural Water District No. 3. If service is available, feasible and the property is eligible for service, Metropolitan Area Building and Construction Department recommends connection.
- C. City of Wichita Public Works and Utilities Department has requested a No Protest Agreement for future extension of sanitary sewer.
- D. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) along with the corresponding dollar amounts shall be submitted to the Planning Department for recording.

- E. County Public Works has approved the applicant's drainage plan.
- F. The plat proposes two openings along 47th Street South and complete access control along the east 100 feet of old 47th Street South. County Public Works has permitted one opening along old 47th Street South west of the 100 feet of complete access control. Access controls along 47th Street denote 400 feet of complete access control from the intersection of old 47th Street to the first entrance.
- G. Sedgwick County Fire Department advises that the plat will need to comply with the Sedgwick County Service Drive Code.
- H. The plat's text shall note the dedication of the street to and for the use of the public.
- I. The site is located within the Maximum Mission Area of the Air Installation Compatible Use Zone (AICUZ) study to identify noise impact areas around McConnell Air Force Base. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- J. A written response from McConnell Air Force Base is needed regarding their comments on the plat. On April 19th, McConnell informed Staff they would like additional time to evaluate the proposal and stated their biggest concerns are security issues and status of the facility should it change ownership. The applicant has increased the setback to 20 feet between the two properties and platted this setback to address security concerns.
- K. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to tricia.robello@sedgwick.gov and nstrahl@wichita.gov.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. The applicant should check City or County GIS mapping to determine whether the location of any taxing district boundaries (e.g. school districts) crosses their property and plan accordingly to avoid unnecessary splitting of lots between taxing districts.
- S. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- T. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

NEIL STRAHL, PLANNING STAFF stated that the plat was approved by the Subdivision Committee in April. He said item J. required a written response from McConnell Air Force Base on the plat since it abuts the base. He referenced McConnell's response regarding the setback and their requirement of a 250 foot boundary barrier in addition to a 100 foot setback. He said the UZC only requires a 15 foot setback but in an effort to compromise, the applicant increased the setback to 50 feet as shown on the site plan. He said McConnell said they do not intend to object to the plat with the 50 foot setback; however, they wanted the applicant to be aware of the considerable noise from the jet blast generated from their aircraft. He said they did not want to deal with any possible future complaints in that regard. He said they requested that language be added regarding jet blasts and noise. He said the applicant agreed to that.

WARREN referenced the letter from McConnell Air Force Base with regard to the fact that they have no legal basis for requesting denial. He mentioned that the Planning Department should take into consideration the mission of new tankers. He said he is concerned about the close proximity of the zone change to the runway.

CHRIS BOHM, RUGGLES & BOHM, AGENT FOR THE APPLICANT said this is a triangular shaped piece of ground. He said they will have approximately 550 feet clearance. He said the applicant respects the proximity of McConnell Air Force and their presence to the community.

WARREN commented that McConnell is not going to say they have a problem with this because they don't want to interfere with the local community. He said he would rather buy the owner out and have them find another location rather than take the risk of jeopardizing the mission of McConnell Air Force Base. He said he thinks that is a minor consideration compared to what the community can lose.

DENNIS said he imagines flight safety looked at this and signed off that it will not impact them. He said he did not believe McConnell would have signed off on this if it had not been approved by flight safety.

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

DENNIS moved, **FOSTER** seconded the motion, and it carried (9-1). **WARREN** – No.

2-2. SUB2016-00018: One-Step Final Plat – FOSSIL RIM COMMERCIAL ADDITION,
located on the southeast corner of 29th Street North and Tyler Road.

NOTE: This is unplatted property located in the City. The Fossil Rim Commercial Community Unit Plan (CUP2016-00015, DP-340) was approved for this site.

STAFF COMMENTS:

- DRAFT**
- A. City of Wichita Public Works and Utilities Department requests a petition for extension (mains and laterals) of sanitary sewer and City water services.
 - B. The plat's text references drainage easements which are not reflected on the face of the plat.
 - C. The plat's text references drainage and utility easements which are not reflected on the face of the plat.
 - D. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) along with the corresponding dollar amounts shall be submitted to the Planning Department for recording.
 - E. City Stormwater Management advises the drainage plan has been approved.
 - F. Traffic Engineering has approved the access controls. The plat proposes two openings along Tyler and two openings along 29th Street North.
 - G. Traffic Engineering has requested a guarantee for left turn center lanes and right turn decel lanes to all full movement approaches.
 - H. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.

- I. The joint access openings shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a restrictive covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. The Applicant needs to request a CUP adjustment as the CUP parcel boundaries do not correspond with the area being platted and access controls need adjusted.
- M. The wall easement shall be referenced in the plat's text.
- N. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- O. The Register of Deeds Certificate shall include Judy J. Paget as Deputy.
- P. The applicant shall verify that only Craig A. Kreiser, as co-trustee, can sign for the trust.
- Q. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- R. City Environmental Health Division advises that any wells installed on the property for irrigation purposes will have to be properly permitted, installed and inspected.
- S. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to tricia.robello@sedgwick.gov and nstrahl@wichita.gov.
- T. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.

- V. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- W. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Y. Perimeter closure computations shall be submitted with the final plat tracing.
- Z. The applicant should check City or County GIS mapping to determine whether the location of any taxing district boundaries (e.g. school districts) crosses their property and plan accordingly to avoid unnecessary splitting of lots between taxing districts.
- AA. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- BB. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

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

DENNIS moved, **ELLISON** seconded the motion, and it carried (10-0).

3. **PUBLIC HEARING – VACATION ITEMS**

- 3-1. **VAC2016-00028: City request to vacate portion of a platted setback on property,** generally located northwest of 55th Street South and Broadway Avenue.

APPLICANT/AGENT: Mike Love Construction Inc., Mike Love (owner) Ruggles & Bohm, P.A c/o Will Clevenger (agent)

LEGAL DESCRIPTION: Generally described as the inside 5 feet of the platted 25-foot front yard setback of Lots 1-6, Block D & Lots 43-49, Block C, all in the Rivendale Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located north of East 55th Street South, west of South Hydraulic Avenue on both sides of Victoria Street (WCC #III)

REASON FOR REQUEST: More room to build

CURRENT ZONING: Site and all abutting and adjacent properties are zoned SF-5 Single-Family Residential.

The applicant proposes to vacate the inside 5 feet of the of the platted 25-foot front yard setback of Lots 1-6, Block D & Lots 43-49, Block C, all in the Rivendale Addition. All of the subject lots are zoned SF-5 Single-Family Residential. The Unified Zoning Code's (UZC) minimum front yard setback standard for the SF-5 zoning district is 25 feet. If the setbacks were not platted the applicant could have applied for an Administrative Adjustment that would have reduced the SF-5 zoning district's 25-foot front yard setback by 20% resulting in a 20-foot setback. The applicant's request does not exceed what is permitted by an Administrative Adjustment. There is a platted 20-foot easement in the described portion of the vacated front yard setback on Lots 1-6, Block D that will remain in effect. There appears to be a sewer line and manhole, a hydrant and perhaps a water valve located in said easement. Westar has street lights located in the Victoria Street right of way between Lots 4 and 5, Block D and in front of Lot 49, Block C; condition # 2 covers Westar. The applicant does need to maintain proper clearance, per the Westar Service Standards. Heide Bryan is the Westar contact for this vacation request and can be reached at 261-6554. The Rivendale Addition was recorded with the Register of Deeds October 30, 2003.

NOTE: At the time the vacation request was filed the application stated that the subject properties were zoned SF-5. Subsequently a zone change was filed for TF-3 Two-Family Residential zoning on the subject lots; ZON2016-00032, which will be considered at the August 4, 2016, MAPC meeting. The UZC's minimum front yard setback standard for the TF-3 zoning district is the same as the SF-5 zoning district, 25 feet. The change in the zoning does not change the reduction of 5 feet as requested by the applicant.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time July 14, 2016, which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by vacating the described portion of the platted front setbacks on multiple lots and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate the inside 5 feet of the of the platted 25-foot front yard setback of Lots 1-6, Block D & Lots 43-49, Block C, all in the Rivendale Addition. Provide Planning Staff with a legal description of the approved vacated portion of the setback on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide any needed easements prior to the case going to Council for final action.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall 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) Vacate the inside 5 feet of the of the platted 25-foot front yard setback of Lots 1-6, Block D & Lots 43-49, Block C, all in the Rivendale Addition. Provide Planning Staff with a legal description of the approved vacated portion of the setback on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide any needed easements prior to the case going to Council for final action.
- (3) All improvements shall be according to City Standards and at the applicant's expense.

- (4) Per MAPC Policy Statement #7, all conditions shall 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.

WILL CLEVINGER, RUGGLES & BOHM, AGENT FOR THE APPLICANT commented that several of the plats were platted unusually narrow and because of that, it is difficult to fit buildings on the lots. He said that is why they are requesting the setback vacation to make the lots more buildable. He said they are in agreement with staff comments.

CONNIE DAVIS GOFF, 5434 S. VICTORIA STREET said she does not understand what they are talking about as far as a setback. She said the area is platted single-family and it does not seem like there is enough area to put duplexes. She commented that they have attempted to contact the City regarding mowing in the area and that she and her husband have been doing it themselves because the City does not respond.

WARREN explained that a setback is simply how close the building can be built to the street whether it is single-family or multi-family.

DEANA WEISHAAR, 5412 S. PATTIE said if the neighborhood is not happy with the zoning that is being proposed and the Commission is voting on something already, she thought that was out of place. She said she does not understand how this all takes place. She said they don't want the setbacks to be any different from the rest of the area. She also asked why the rest of the community wasn't notified. She said she was aware of the 200 foot notification requirement, but added that this affects the entire community. She said the value of their homes has gone down already and they cannot afford anymore devaluing of their homes.

ELLISON asked the speaker to explain how their homes were devalued and what they feel caused that.

WEISHAAR briefly explained that when they moved into the area, there were covenants and it looked like the area was going to be kept up so their homes would keep their value which is why they moved into the area. She said the covenants expired and the area now looks crappy all the time. She said they don't know who the developer is anymore. She said recent appraisals have gone down and homes that were originally \$300,000 are now selling for \$187,000. She said this proposed multi-family will also devalue their property.

TODD commented that the setback will make it more buildable for single-family.

CHAIR NEUGENT asked staff to respond to the speaker's questions about processing the applications.

LONGNECKER commented that the vacation and rezoning cases happened on the same closing date which brings them both to this meeting for review. He commented that the neighbors have two weeks after this hearing to protest the vacation if they do not want the 20% reduction in the setback regardless of what happens on the zoning case. He said the lots are over 6,000 square feet in size so they are adequate for either single-family or two-family residential zoning.

TED WEISHAAR, 5412 S. PATTIE said the covenants are there but just not enforced. He said this area is platted for single-family dwellings so they feel it would be better for homes to be built on these lots.

CLEVINGER said some of the lots are deep and that is why it is helpful to have the setback reduction to make the lots more buildable.

WARREN said the problems in the area go back to when it was developed. He said the requested setback will make it more likely that the properties will be developed.

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

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

3-2. **VAC2016-00029: City request to vacate a platted utility easement on property,**
generally located north of 37th Street North on the west side of Ridge Road.

CASE NUMBER: VAC2016-00029 - Request to vacate a platted utility easement

APPLICANT/AGENT: 37th & Ridge Development Co. LLC, c/o Mike Boyd (owner) Baughman Co., PA, c/o Phil Meyer (agent)

LEGAL DESCRIPTION: Generally described as vacating the platted 20-foot wide by 220.06-foot long platted utility easement located on the common lot line of Lots 4 & 5, Block A, Northridge Plaza Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located north of W 37th Street North on the west side of North Ridge Road (WCC V)

REASON FOR REQUEST: Development over unused easement

CURRENT ZONING: The site, all abutting and adjacent properties are zoned LC Limited Commercial

The applicant is requested the vacation of the platted 20-foot wide by 220.06-foot long platted utility easement located on the common lot line of Lots 4 & 5, Block A, Northridge Plaza Addition. There are no public utilities located within the subject easement. Westar has no equipment located in the subject easement; conditions # 2 and #3 covers Westar. The applicant does need to maintain proper clearance, per the Westar Service Standards. Richard Aitken is the Westar contact for this vacation request and can be reached at 261-6320. The Northridge Plaza Addition was recorded June 4, 2002.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time July 14, 2016, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by vacating the platted utility easement and that the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Provide a legal description of the vacated portion of the platted utility easement on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00029 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00029 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) As needed provided Public Works-Sewer (and any other utility located within the subject easement) with a private project plan for the relocation/abandonment of the sewer line and manholes located within the subject easement for review and approval. Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number to Planning prior to VAC2016-00029 proceeds to the City Council for final action.

- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (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 a legal description of the vacated portion of the platted utility easement on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00029 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00029 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) As needed provided Public Works-Sewer (and any other utility located within the subject easement) with a private project plan for the relocation/abandonment of the sewer line and manholes located within the subject easement for review and approval. Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number to Planning prior to VAC2016-00029 proceeds to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (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.

WARREN moved, RAMSEY seconded the motion, and it carried (10-0).

- 3-3. **VAC2016-00030: City request to vacate a portion of a platted alley**, generally located north of Pawnee Avenue on the west side of Hillside Avenue.

CHAIR NEUGENT reported that the item was deferred.

- 3-4. **VAC2016-00031: City request to vacate a portion of a platted alley**, generally located south of Douglas Avenue on the east side of Poplar Street.

CHAIR NEUGENT reported that the item was deferred.

PUBLIC HEARINGS

4. **Case No.: ZON2016-00032** - Mike Love Construction (owner) Will Clevenger, Ruggles & Bohm (agent) request a City zone change request from SF-5 Single-family Residential to TF-3 Two-family Residential for 13 lots on Victoria Street on property described as:

Lots 43, 44, 45, 46, 47, 48 and 49, Block C AND Lots 1, 2, 3, 4, 5 and 6, Block D, Rivendale Addition, Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting a zone change from Single-Family Residential (SF-5) to Two-Family Residential (TF-3) zoning on approximately 2.73 acres of Rivendale Addition to Wichita, Sedgwick County, Kansas. The applicant proposes to build duplexes on 13 platted lots located on either side of Victoria Street, immediately north of 55th Street South.

The subject site is located within the SF-5 zoned Rivendale Addition. The Rivendale Addition is partially developed with single family residences adjacent to the subject property to the north, west, and east. Immediately east and west of the subject property are single family residences on large, unplatted lots. South of the subject site is unplatted SF-5 zoned tracts developed with mobile homes.

CASE HISTORY: The site is located within the City limits of Wichita and consists of 2.73 acres of the Rivendale Addition platted in 2003.

ADJACENT ZONING AND LAND USE:

| | |
|-------------|--|
| NORTH: SF-5 | Single-family residential, undeveloped (Rivendale) |
| SOUTH: SF-5 | Single-family residential, unplatted lots |
| WEST: SF-5 | Single-family residential, unplatted lot |
| EAST: SF-5 | Single-family residential, unplatted lot |

PUBLIC SERVICES: The site has access to local, paved collector streets that access East 55th Street South, a paved, two-lane arterial with 90-foot right-of-way. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Wichita City limit and the South Wichita/Haysville Area Plan. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "residential," encompassing areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality. The site is located in the South Wichita/Haysville Area Plan, which identifies the location for residential development.

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

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The surrounding neighborhood is zoned SF-5 and is partially undeveloped. Properties immediately to the west, east and south are developed with single-family residences. The proposed duplexes are located within a stand-alone block at the entrance of the subdivision and are only adjacent to the rear of lots developed with existing single-family residences.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The vacant site is currently zoned SF-5 and is undeveloped. As zoned, these units would have to be single-family. With the proposed zoning, they could be single-family or duplexes.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Impact on surrounding property due to the requested zone change should be minimal. Single-family residences have only partially developed in the Rivendale Addition and the proposed duplexes are in a separate portion of the subdivision. This separation should mitigate any detrimental effects on nearby property.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Wichita City limit. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "residential," encompassing areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality. The South Wichita/Haysville Area Plan identifies the area as appropriate for residential development.
- (5) **Impact of the proposed development on community facilities:** All services are in place. Any increased demand on community facilities can be handled by existing infrastructure.

KATHY MORGAN, Planning Staff presented the Staff Report.

WILL CLEVINGER, RUGGLES & BOHM, AGENT FOR THE APPLICANT commented that the area was platted back in 2003 and the area they are requesting the zone change on has been vacant since that time. He said the area has never been finished and they believe the downturn in the economy stopped construction. He said his client would like to make an investment in this area and make the site more buildable so it is not sitting vacant, overgrown and not maintained.

WARREN asked about the applicant's construction timeframe and the square footage of the buildings.

CLEVINGER said he did not know about the timeframe but he understood the buildings would be approximately 1,800 square feet but he was not sure if that was per building or unit.

JOHNSON clarified that they intended to build a duplex on each lot.

CLEVINGER responded yes.

DAILEY commented that it was important to know whether it was 1,800 square feet per building or unit.

CLEVINGER said he has pictures of similar buildings that are 3,600 square feet per building. He said the units have a finished basement and upstairs.

WARREN asked if it was possible that a PO could stipulate a minimum building square footage.

JEFF VANZANDT, ASSISTANT CITY ATTORNEY said only if the applicant agrees to it. He said the Commission can't force the applicant to build a building of a certain square footage.

MORGAN reported that DAB III deferred the item because they wanted elevations and information on what type of building materials would be used. She said they will rehear the item on Wednesday, September 7, 2016.

CONNIE DAVIS GOFF, 5434 S. VICTORIA STREET said she doesn't understand how this can go through zoning when they don't know what is going on in their neighborhood.

MOTION: To defer action to the October 6 Planning Commission meeting until they get the results of the DAB Meeting.

JOHNSON moved, **DAILEY** seconded the motion.

WARREN asked if there were any other issues besides the DAB hearing that the Commission needed information on.

FOSTER said he would like to hear the rest of the public to see if there are any additional items that need to be addressed and the applicant's rebuttal before a vote was taken.

The **MOTION** to defer was withdrawn.

LEWIS HUEBLER, 1421 E. 55TH STREET SOUTH said he owns the 10 acres south across the road and has lived there since 1978. He said the whole area is relatively new and he was thrilled when development started because he thought it would be an upgrade for the neighborhood. He said as soon as development started property values went up. He said that was until the economy went to pot all over the United States which is what happened in this area. He said he could tolerate high-grade duplexes. He said he was going to divide up his 10 acres once this development was completed. He said he would like to see the duplexes to see exactly what is being proposed. He said they might be willing to support it. He said they do not want this to become another low-income neighborhood.

ELLISON asked if the neighbors requested a meeting with the owner of the proposed new development.

LEWIS said it was not his reasonability to request a meeting. He said if the owner has opposition to his proposal it should be his duty to get a hold of the neighbors and tell them what the plan is. He said he would be more than happy to attend a meeting with him.

DEANA WEISHAAR, 5412 S. PATTIE said she is concerned that if they can't construct single-family homes how are duplexes supposed to be constructed on these properties. She commented that the rest of the community was not notified and that a neighbor told her about this meeting. She said this area started out with very nice homes that depreciated immensely. She said with all the empty lots once multi-family gets started it will open the door to more of it which will then deplete the value of their homes even more. She said they do not want low-income in the area. She said she is not in favor of that and doesn't believe the Commissioners would be either if this were it to come into their neighborhoods. She said this breaks her heart because this could be a beautiful area.

TED WEISHAAR, 5412 S. PATTIE said he did not believe it was possible to get an 1,800 square foot duplex and reduce the setback on the lots. He commented that the new owner hasn't even mowed so that does not leave a good impression with him. He said he does not think this type of development is a good idea because once it is started that opens up the door for more of it which will lower home values in the neighborhood. He said there is no way to keep the duplexes maintained because people do not have ownership. He said they do not want low income and would like to see rent ranges for the proposed duplexes.

JOHNSON encouraged the neighbors to attend the District Advisory Board meeting on Wednesday, September 7, 2016.

CLEVINGER stated that Mike Love does own the property. He said they will be attending the DAB meeting on September 7 and now that they are aware of the neighbor's concerns, they will put forward the effort to provide site plans, elevations and pictures of exactly what is being proposed.

TODD asked about the restrictive covenants on the property.

DAILEY asked that the DAB also be provided the square footage for each side of the duplex.

CLEVINGER said he would get additional information on the specifics of what is being planned.

MOTION: To defer the item until the October 6, 2016 Planning Commission Meeting.

JOHNSON moved, **DAILEY** seconded the motion (10-0).

-
5. **Case No.: ZON2016-00033** - Green Vision Developer, LLC (owner) and Baughman Company, PA, Russ Ewy, (agent) request a City zone change on 23.2 acres from SF-5 Single-family Residential to TF-3 Two-family Residential on property described as:

All of Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48, Block A, TOGETHER with all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block B, TOGETHER with all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, Block C, TOGETHER with all of Reserves "A", "B", "C", "D", "E", "F", and "G", all as platted in Castlegate Addition, Wichita, Sedgwick County, Kansas

BACKGROUND: The applicant is requesting a zone change from Single-Family Residential (SF-5) to Two-Family Residential (TF-3) zoning on approximately 23.2 acres of Castlegate Addition. The applicant proposes to build duplexes existing platted lots on the subject property.

West of the subject site is a 79- acre tract zone SF-20 developed with a single-family residence with associated agricultural land. North of the subject site is SF-5 zoned 2nd & 3rd Buckhead Addition developed with single-family residences. Property east of the subject site is SF-5 zoned Country Meadows West Addition developed with single-family residences. Immediately south of the subject property are three single-family residences zoned SF-5 that front Central and a vacant lot zoned MF-18 on west side of Firefly. South of the subject property, across Central, is SF-5 zoned Bay Country Subdivision partially developed with single family residences.

CASE HISTORY: The site is located within the City limits of Wichita and consists of 23.2 acres of the Castlegate Addition, which was recorded June 9, 2014.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|-------------|---|
| NORTH: | SF-5 | Single-family residential |
| SOUTH: | SF-5; MF-18 | Single-family residential, partially developed land |
| WEST: | SF-20 | Agriculture |
| EAST: | SF-5 | Single-family residential |

PUBLIC SERVICES: The site has access to local, paved collector streets that access West Central Avenue, a paved, four-lane arterial with 110-foot right-of-way. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, *the Community Investments Plan*, identifies the site as Residential Growth. The Plan encourages the full diversity of residential housing types and densities typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to single-family, duplexes, patio homes, townhouses, apartments and residential accommodations for the elderly. Elementary and middle schools, churches, playgrounds, small parks and other similar residential-serving uses are located in these areas.

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

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The site is located in a predominately SF-5 zoned single-family residential neighborhood. Single-family residences are located to the north, east and south of the Castlegate Addition. The proposed duplex development will be separated from existing single-family developments and will have a separate entrance and does not share any street access with surrounding single-family neighborhoods.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** TF-3 zoning would allow single-family residences and duplexes to be built, which is an appropriate use for urban residential development. The proposed duplex development is separated from adjacent single-family neighborhoods, which should mitigate any detrimental effects on nearby property.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested TF-3 zoning allows duplexes as well as single-family residences by right. There is TF-3 and MF- 18 zoning within one-quarter mile of the subject site.
- (4) **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Approval of the request would limit development by right to single-family residential, duplex, and some (but not limited to) institutional uses such as a parks, schools and churches.
- (5) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The adopted Wichita-Sedgwick County Comprehensive Plan, *the Community Investments Plan*, identifies the site as Residential Growth. The Plan encourages the full diversity of residential housing types and densities typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to single-family, duplexes, patio homes, townhouses, apartments and residential accommodations for the elderly. Elementary and idle schools, churches, playgrounds, small parks and other similar residential-serving uses are located in these areas. As such, the TF-3 zoning within the Castlegate Subdivision conforms to the future growth concept prescribed by the Community Investment 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.

KATHY MORGAN, Planning Staff presented the Staff Report. She referred to the DAB V Memorandum and reported that the DAB recommend denial of the application 6-1-1.

WARREN asked about the locations of the entrances and exists.

MORGAN commented that the main entrance into the development will be off of Central Avenue; however, there will be a secondary access on Cindy Street.

TODD asked when the area was platted.

MORGAN said it was platted in 2014 as single-family patio homes.

TODD asked why it was platted one way and not completed; what was the reason for that.

MORGAN commented that the previous property owner passed away so the property has been in limbo for about two years while they tried to find another developer for the property.

RUSS EWY, BAUGHMAN COMPANY, 315 ELLIS, AGENT FOR THE APPLICANT commented that **JUSTIN COOK, AGENT FOR THE DEVELOPER** was also present to answer questions. He said the property is still in a family trust and they have been working with various developers over the last two years to bring Mr. Ketzner's vision for the property to life. He said none of the developers were able to make the financials work with single-family patio homes which is why they are seeking two-family residential zoning under a new developer who has done this type of development throughout the Midwest region.

EWY said last week they met with the HOA Board to apprise them of what was being proposed and get their feedback. He said at the DAB meeting neighbors expressed the same concerns they received from the HOA Board and coincidentally like the Commission just heard on the previous zoning case. He said one of the items mentioned at the DAB meeting, which he didn't know what it had to do with land use, was this developer's track record.

EWY said they had a small slide presentation. He said the units would be 1,200 square feet on each side or 2,400 square feet per building. He said they are proposing 74-75 duplex lots. He said currently the area is platted for 80 single-family residential patio homes. He said the existing plat is lotted out at approximately 6,500 square feet for each lot. He said Trinity (the Contract Purchaser) has developed similar developments, townhome, multi-family and apartment developments in Oklahoma, Arkansas and Kansas. He said this property has been vacant for almost two years and is in a state of disrepair. He said the streets are graded and there is water and sewer on the southern half of the property and the storm water system is completely in ground. He said currently the property is an eye-sore with a lot of capital in the ground. He referred to pictures of some of the developer's developments. He concluded by saying that they are in agreement with staff comments.

JUSTIN COOK, 6515 ZERO ST., FT, SMITH, ARKANSAS.

FOSTER commented on the evolution of high density housing. He mentioned economics and asked what other factors besides simply dollars go into making that decision.

COOK referred to a slide regarding the driving forces for development including demographics, economics, and preferences. He said baby boomers are downsizing while millennials are moving out of their parents homes. He said the average workers changes jobs seven times throughout their career so mobility and not being tied to a mortgage is important. He said the 2008 mortgage collapse has shaken the idea of home ownership as an investment in some people's eyes. He said the final factor is ease of lifestyle and not having to worry about maintenance and upkeep on a property.

FOSTER asked if Trinity was going to be managing the property.

COOK responded yes, Trinity owns and operates approximately 8,000 multi-family units in the tri-state area. He said they provide on-site management.

JOHNSON clarified the units would be for rent, not for sale.

COOK said they will be rental units.

TODD asked if this development would include any subsidized Section 8 rentals.

COOK said some of their portfolio is subsidized housing; however, this particular development does not meet that type of criteria.

ED GERSTENKORN, 926 N. FIRELFY said his home is located north of this proposed development. He said 30 plus people at the DAB meeting said they did not want the zoning change. He said he and his wife have lived in their home 13 years and they want to make sure the community goes up rather than down. He said they learned once housing values go down, upper end developers leave and small low end developers go in. He mentioned the recommendation in the Staff Report to proceed with the plan although the neighbors don't want it. He said it was portrayed as a no lose situation because it would generate extra taxes but it didn't mention the loss in home values for the people who have paid taxes over the last 10 years in that community. He said that should be taken into account. He said another of his concerns is this is a business when you build a group of duplexes. He said it is not a home and you don't have home pride and spend time and money on it. He said if the management company finds out they can cut a corner and do maintenance half as often, that is what is going to happen. He said Bay Country Street is a single-family development and you can barely find a place to park because of the density of the homes. He said he does not feel the zoning change is wise for the City or the neighborhood.

WARREN commented that the area is platted now as high density single-family patio homes. He asked why the speaker thinks home values will drop if this goes to multi-family.

GERSTENKORN said it is high density but they were upper end home patio homes with granite counter tops, not Formica counter tops. He said they are concerned about the quality of the development.

ROY BATY, 12601 WEST BIRCH said his home backs up to this property. He said he has lived there almost 15 years. He commented that there was a protective overlay in the area and when he was doing his research he found that it was to insure compatible development that it is appropriate to the neighborhood and minimize any devaluation of surrounding property. He said he is going to have duplex rental properties right out his back door. He said he has no problem with someone wanting to do something with their property until it affects his property. He said that PO was put there for a reason. He said the area is single-family dwellings and he is also concerned about Section 8 housing. He concluded by asking what happens if the property gets sold. He said he would like something in writing that says Section 8 housing will never happen in that development if that is possible.

DAN BLASI, 12500 WEST CENTRAL said he owned half of this 22 acre site some 50 some years ago. He said if apartments go in at this location there is no way it is not going to run their property values down. He asked about putting up a fence or wall to help protect the neighbors. He also asked how much money the developer is going to spend on the development. He said he sold the ground because he was told what was going to be built (the patio homes). He said if they offered this proposal, he would still be farming it. He asked the Commission to take into consideration that the neighbors have been there a while and they take pride in what they have.

LANCE THOMPSON, 12609 WEST BIRCH, PRESIDENT, DEARGLEN HOMEOWNERS ASSOCIATION said he wanted to be clear that it was not concern expressed by the surrounding homeowners at the previous meeting, it was outrage. He said the neighbors do not want this to happen. He said the previously proposed patio homes were supposed to cost between \$250,000 to \$300,000, be individually owned and managed by a property management company. He said that is a long way from a duplex. He added that originally they were talking about 84 homes and now it is 150 homes. He said that is doubling everything that is going in there. He said he has no studies about property values but asked the Commission is they would move in next door to a duplex. He said he lives on the north boundary of this. He said he believes the agent is sincere and that they have great intentions of taking care of the property, but he asked how long are they going to own this property. He said the neighbors are in this for the long haul. He mentioned the duplex communities at 13th and Tyler. He said they moved into a covenant community and the Board tries to enforce those rules. He said they object to development of high occupancy, multi-family dwellings right outside their door. He said personally he understands that the heirs want to get rid of this and that the City wants to get it developed but he is extremely horrified by this notion. He asked about the notification area and alleged that no one in Bay Country was notified. He said he did not want to discuss what happened at the DAB meeting but he said they ruled that this proposal not continue and he hoped the Planning Commission did the same.

JOHNSON asked staff to respond to questions regarding notification of surrounding property owners.

LONGNECKER commented that the title company provided the names and addresses of property owners within 750 feet of the property as required by law.

WARREN asked that the speakers not repeat issues.

JOHNSON (Out @3:25 p.m.)

JERRY MACINTIRE, 937 N. FIRELFY said he was talking with the Vice President of Bay Country and was told the subdivision was totally unaware of this but he noticed that the Vice President from Bay Country was at the meeting. He said homes in the area run anywhere from \$190,000 to \$275,000. He said he doesn't feel he has to sacrifice the value of his property to bail someone out of an investment. He said the patio homes and assisted living center originally proposed for this area would have been a perfect fit. He said these duplexes with no covenants does not fit. He also asked what happens 5-10 years down the road if this gets sold.

DELBERT ALT, 829 N. BAY COUNTRY said he has a big stake as far as his property values are concerned. He said he has lived in the area since 1998 when the properties were developed and he and his wife located there because it is in the Goddard School District and because the property values in the area were so high. He said he totally opposes having anything other than patio homes or single-family dwelling in this area for the same reasons that have been stated by other speakers. He also said he is concerned about the density of traffic on Cindy Street with 150 units being added in the area instead of the originally proposed 84.

RAMSEY (Out @3:35 p.m.)

DEB MOLACEK, 817 N. BAY COUNTRY said her backyard will be directly adjacent to the property. She said this proposal was an insult and not the original vision of the owner who was a reputable builder who wanted to do better than what is being proposed. She said she doesn't know anything about the developer Trinity but on her Internet search she found complaints about the way their property is managed. She said it is a gross understatement to say she doesn't want this in her backyard. She said to say they are not sure this will affect their property values is ridiculous. She said her property has gone up in value since she has lived there the last 13 years.

SERITA THEIS, 12610 W. CENTRAL AVENUE said the area has changed in the last 50 years because it used to be pure country. She said now there are homes everywhere and now she is going to have rentals behind her, which upsets her. She said she sold 10 acres to the previous developer for a gated community with limited access and a wall all the way around it. She said she would like to see pictures of Trinity rental communities that have been there for at least 10 years and talk to the people who live there and some of the neighbors. She said she does not want to see this development behind her and is very opposed to this unless they put up a fence.

WILLIAM STARNES, 12609 HARDTNER CIRCLE said just for the record he lives within 750 feet of this location and was not notified. He said the problem with rentals is there is no pride in ownership and the management companies are off site and out of state. He proposed that another notice be sent to Bay Country about the proposed changes.

WARREN asked what the procedure is if it is determined that the legal notification is in error.

VANZANDT said this meeting will be voided, property owners will need to be renoticed and the Planning Commission public hearing process will be done again.

CHARLES MAY, 12502 WEST BIRCH said he has the same concerns that have been stated. He said the TF-3 area in yellow on the map consists of only seven duplexes. He said most of that area is single-family residential so it isn't similar to what is being proposed. He mentioned other developments on the Trinity web site that do not look like the ones shown in the presentation. He said some of them are somewhat run down. He said he is opposed to rezoning of the area.

JOHN FLEICHMAN, 725 N BAY COUNTRY said he is definitely against this for a few reasons. He said realtors know the pulse of the community and when they bought into this area in 2000 they were advised not to buy near duplexes because property values around those types of developments generally don't go up. He commented that Section 8 housing was brought up at the DAB meeting and the representative did not say Trinity had Section 8 in any of their developments. He said Trinity has no vested interest in the area because they are an out of state company. He said he is also concerned about density and traffic and children in the area. He said the original proposal for this area was a high end retirement gated community. He said going from that to a duplex which doubles the amount of living facilities and cars is a major safety issue.

EWY said undoubtedly duplex zoning is the steepest hill to climb to get a zone change. He said the saving grace from their side of the debate is the Commission has other considerations than neighborhood opposition. He said there will be neighborhood opposition each and every time duplex zoning is requested. He said there is an ingrained perception of what duplexes mean and said a lot of those fears are unfounded. He said the units will be for lease; however, the same could be said of the patio homes so he feels the rental argument is a shallow one, in his opinion. He said the density issue is relevant from a traffic stand point and they feel the primary exit from the development would be onto Central Avenue. He added that Bay Country is a public road.

MOTION: To allow the speaker 30 more seconds.

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

EWY said he is asking the Commission to step back from the passions of the property owners who have spoken here today and review this request as they do every zoning case using the Nine Golden Factors and ask themselves, besides neighborhood opposition, is this an appropriate land use for this location.

WARREN asked about proposed buffering and fencing.

EWY said that was discussed at the meeting with the HOA Board. He said they wanted a masonry wall. He said the applicant would like to provide a wooden screening fence and landscaping as a buffer. He said most of the homes in the area have wooden fences. He said he does not believe a screening plan would persuade any of the neighbors from dropping their opposition to the proposal.

FOSTER asked about the covenants on the land and what happens when the zoning is changed.

VANZANDT said the covenants run with the land regardless of the zoning. He said covenants can be difficult to enforce and are a civil matter.

FOSTER asked if a traffic analysis study had been done.

EWY said traditionally agents don't deal with trip generation unless the development is large scale such as 30 plus acres and generates commercial or industrial traffic. He said Planning Staff has never required a traffic impact analysis on this type of development.

DENNIS said he has been concerned about this development for some time and drives by the mounds of dirt and weeds next to Central Avenue and the uncompleted sidewalk, and said this needs to be fixed. He said he has a problem with the solution that is being proposed. He said nothing in the Golden Rules talks about "not in my backyard." He said what they do talk about is the character of the neighborhood. He said Bay Country is a crowded cul-de-sac. He said adding traffic from Cindy Street into the mix will make the area practically inaccessible. He said this type of development in this area does not fit the character of the neighborhood and he feels is not suitable.

MOTION: To deny the application.

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

TODD said he thinks the concerns of the neighborhood are justified because they were promised high-end, owner-occupied homes, not a commercial venture with out of state ownership.

WARREN said he has lived in a duplex more than half of his adult life. He said a lot of new subdivisions are mixed developments of nice houses and nice duplexes. He said he has been in residential real estate since 1978 and has not found property devaluation based on zoning or density, it is based on quality and property maintenance. He admitted that some multi-family properties are not well maintained and that can have a negative effect on surrounding property values. He said he has also seen the opposite happen, where single-family residences are not maintained.

There was brief discussion concerning the vote. It was agreed that a simple majority of the members present was enough to forward the recommendation to the City Council.

The **MOTION** to deny carried (7-1). **WARREN** – No.

6. **Case No.: CON2015-00029** - Homer Morgan Revocable Trust, c/o Homer Morgan trustee (applicant/owner) and Stephen M. Joseph (agent) request a City Conditional Use permit for a Tavern and Drinking Establishment and Entertainment Establishment and Nightclub in the City within 300 feet of residential zoning on property zoned LC Limited Commercial on property described as:

Lot 11 EXCEPT the North 105 feet and EXCEPT a tract beginning 273 feet North of the Southeast corner, thence West 280 feet, thence South to the Southwest corner, thence Easterly to the Southeast corner, thence North to the point of beginning, Block B; South Broadway Gardens 2nd Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The LC Limited Commercial (LC) zoned site is located south of West 43rd Street South, on the west side of South Broadway Avenue. Currently the 2,670-square foot one-story building (built 1949 and 1987) is occupied and advertises itself as BC's Bar and Grill. When a LC zoned tavern, drinking establishment or nightclub is located within 300 feet of a church or place of worship, public park, public or parochial school or residential zoning district, approval of a Conditional Use is required; Unified Zoning Code (UZC), Sec.III-D6.w. SF-5 Single-Family Residential (SF-5) zoned properties abut the west side of the site. There is no history of a Use Exception or Conditional Use for a tavern, drinking establishment or nightclub on this site. However, the applicant has stated that the site has for 30 continuous years been either a tavern, drinking establishment or nightclub. The site's liquor license is current. The applicant is applying for a Conditional Use for a nightclub to get the site in conformance with the UZC.

The applicant's site plan is an aerial. The aerial does not show marked parking spaces, but there is paved parking on the east side of the site as well as along portions of the north and south sides. There is also a gravel area located behind the building on the west side of the site. A single-wide manufactured home is located west of the gravel area. This manufactured home is located on the subject site and separates the proposed night club from the west abutting SF-5 zoned single-family residences.

Per the manager of the current business, BC's Bar and Grill, the occupancy rate of the nightclub is posted at 96. Based on the 96 permitted occupants the total parking required for the nightclub is a total of 48 parking spaces; one space per two occupants. The applicant will need show 48 parking spaces on a revised site plan or apply for either a variance, an off-street parking agreement or a combination of the two to meet the UZC's parking standards. The UZC requires off-street parking space to be located no more than 600 feet from the building or use it is intended to serve, measured along the shortest legal, practical walking route. The gravel area can be used for parking if it is paved. The aerial/site plan does not show the required solid screening to separate the site from the west abutting SF-5 zoned single-family residences. The aerial/site plan showed no clear location and screening of dumpsters. The front of the site is completely paved over with no opportunity for landscaping. There are no on-ground parking stops or a rail barrier to prevent cars parked on the east side of the site, along Broadway Avenue, from overlapping into the right-of-way where the sidewalk is located.

The development pattern in the area is small LC and GC zoned businesses located along this relatively short portion of Broadway Avenue between I-235 (north side) and the Big Slough South (south side). Car sales lots, a boat sales lot, a motel, a Fire Station, a vacant commercial strip building and a one or two vacant lots that appear to have been car sales lots, are all located along the arterial Broadway Avenue. Most of this development was built in the 1950s, followed by development in the 1970s, 1980s, late 1990s and 2011. Fire Station #19 was built in 2002. The west abutting SF-5 zoned single-family residences were mostly built in the late 1940s and up to the early 2000s. The nearest nightclub or drinking establishment is Bill and Mary's (built 1940) located less than a quarter-mile north of the site at 4321 South Broadway Avenue.

CASE HISTORY: The site is located on Lot 11 EXCEPT the North 105 feet and EXCEPT a tract beginning 273 feet North of the Southeast corner, thence West 280 feet, thence South to the Southwest corner, thence Easterly to the Southeast corner, thence North to the point of beginning, Block B; South Broadway Gardens 2nd Addition, which was recorded with the Register of Deeds May 1, 1953. The area the site is located in was annexed into the City between 1961-1970

ADJACENT ZONING AND LAND USE:

| | |
|-------------------|---|
| NORTH: LC, GC, LI | Car sales lots, vacant commercial strip building, auto repair, I- 235 |
| SOUTH: LC, GC | Car sales lot, motel, Big Slough South |
| EAST: GC | Fire Station, car sales lots, vacant yard and building, boat sales |
| WEST: SF-5 | Single-Family residences |

PUBLIC SERVICES: The site has access off the paved four-lane, arterial Broadway Avenue. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The “Community Investment Plan’s 2035 Wichita Future Growth Map” depicts the site as “commercial.” The commercial designation encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with, residential uses. A nightclub is an appropriate use of the commercial designation.

DRAFT

Locational criteria for commercial development include three key elements: development pattern, land use compatibility, and design. The development pattern in the area is small LC and GC zoned businesses located along this relatively short portion of Broadway Avenue between I-235 (north side) and the Big Slough South (south side). The proposed nightclub is small enough to be considered a local business. SF-5 zoned single-family residences abut the west side of the site, thus the conditional use request. There are no less intrusive businesses or higher density residential uses located between the proposed nightclub and those closest single-family residences. This proximity could be a potential source of nuisance for the residential zoned properties. The site and the west abutting single-family residential neighborhood do not abut a common street, which lessens the possibility that the customers of the proposed nightclub will be parking in the abutting single-family residential neighborhood. The site does not have the required solid screening between the site and the west abutting single-family residences. The site is completely paved over with no opportunity for landscaping. There are no on-ground parking stops or a rail barrier to prevent cars parked on the west side of the site, along Broadway Avenue, from overlapping into the right-of-way where the sidewalk would continue from the abutting east and west properties.

The site is located within the “South Wichita – Haysville Area Plan” (SW-HAP). A goal of the SW-HAP is to improve the maintenance of the area’s existing businesses. The subject site’s parking needs to be clearly marked, the gravel area located behind the site’s building needs to be paved and marked for parking as needed to achieve the required total of 48 parking spaces. A rail barrier needs to be put up along the site’s east property line to prevent the site’s parking from encroaching over into the side walk along Broadway Avenue. The SW-HAP does not call out attention to the area’s nightclubs, taverns or drinking establishments.

RECOMMENDATION: If approved the conditional use request would bring the site's nightclub/tavern/ drinking establishments into conformance with the UZC. Typically in the older neighborhoods, parking is a critical consideration for recommending approval as is the proximity of a church or place of worship, public park, public or parochial school or residential zoning district. The site may have the required parking spaces, but staff cannot confirm that with the current site plan. If the site does not have the required parking, the applicant will need to apply for either a variance, off-street parking agreements or a combination of the two to meet the UZC's parking standards. It is unknown how the site's past and current history as a drinking establishment or nightclub will affect the neighbors' opinion of the current application. Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, with the following conditions:

- (1) The site shall be developed with an approved revised site plan, showing, but not limited to, the required 48 parking spaces, locating dumpsters 20 feet from the west abutting SF-5 zoned properties with solid screening with a solid screening gate around the dumpsters, the solid wooden fence located along the site's west property line, and a rail to prevent cars parked on the east side of the site, along Broadway Avenue, from overlapping into the right-of-way and sidewalk. No outdoor seating, outdoor speakers or outdoor entertainment is permitted. The site plan must be submitted for review within 60-days of approval by the appropriate governing body.
- (2) Improvements on the site, including the restriping of the paved parking lot, the paving and striping for parking on the gravel area behind the nightclub building, solid screening with solid gates around the site's dumpsters, and a metal rail barrier is installed along the site's Broadway Avenue frontage must be completed within 90 days of approval by the appropriate governing body.
- (3) The applicant shall obtain all required state, local and other applicable permits and inspections.
- (4) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The development pattern in the area is small LC and GC zoned businesses located along this relatively short portion of Broadway Avenue between I-235 (north side) and the Big Slough South (south side). Car sales lots, a boat sales lot, a motel, a Fire Station, a vacant commercial strip building and a one or two vacant lots that appear to have been car sales lots, are all located along the arterial Broadway Avenue. Most of this development was built in the 1950s, followed by development in the 1970s, 1980s, late 1990s and 2011. Fire Station #19 was built in 2002. The west abutting SF-5 zoned single-family residences were mostly built in the late 1940s up to early 2000s. The nearest nightclub or drinking establishment is Bill and Mary's (built 1940) located less than a quarter-mile north of the site at 4321 South Broadway Avenue.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned the LC, which is meant to accommodate retail, commercial, office and other complementary uses. If approved the request would bring the site's

nightclub/tavern/ drinking establishment into conformance with the UZC.

- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** SF-5 zoned single-family residences abut the west side of the site, thus the conditional use request. There are no less intrusive businesses or higher density residential uses located between the proposed nightclub and those closest single-family residences. This proximity could be a potential source of nuisance for the residential zoned properties. Typical concerns about tavern/drinking establishment/nightclub include bad behavior resulting from unlimited liquor sales, the noise from music and dancing, and the hours of the nightclub having a detrimental impact on the residential neighborhood.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “Community Investment Plan’s 2035 Wichita Future Growth Map” depicts the site as “commercial.” The commercial designation encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with, residential uses. A nightclub is an appropriate use of the commercial designation.

Locational criteria for commercial development include three key elements: development pattern, land use compatibility, and design. The development pattern in the area is small LC and GC zoned businesses located along this relatively short portion of Broadway Avenue between I-235 (north side) and the Big Slough South (south side). The proposed nightclub is small enough to be considered a local business. SF-5 zoned single-family residences abut the west side of the site, thus the conditional use request. There are no less intrusive businesses or higher density residential uses located between the proposed nightclub and those closest single-family residences. This proximity could be a potential source of nuisance for the residential zoned properties. The site and the west abutting single-family residential neighborhood do not abut a common street, which lessens the possibility that the customers of the proposed nightclub will be parking in the abutting single-family residential neighborhood. The site does not have the required solid screening between the site and the west abutting single-family residences. The site is completely paved over with no opportunity for landscaping. There are no on-ground parking stops or a rail barrier to prevent cars parked on the west side of the site, along Broadway Avenue, from overlapping into the right-of-way where the sidewalk would continue from the abutting east and west properties.

The site is located within the “South Wichita – Haysville Area Plan” (SW-HAP). A goal of the SW-HAP is to improve the maintenance of the area’s existing businesses. The subject site’s parking needs to be clearly marked, the gravel area located behind the site’s building needs to be paved and marked for parking as needed to achieve the required total of 48 parking spaces. A rail barrier needs to be put up along the site’s east property line to prevent the site’s parking from encroaching over into the side walk along Broadway Avenue. The SW-HAP does not call out attention to the area’s nightclubs, taverns or drinking establishments.

- (1) **Impact of the proposed development on community facilities:** A possible increase in demand for police services as a result of approval of this request may not be likely as the applicant has stated that the site has for 30 continuous years been either a tavern, drinking establishment or nightclub.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

7. **Case No.: CON2016-00018** – Homer Morgan Revocable Trust, c/o Homer Morgan, trustee (applicant) and Stephen M. Joseph (agent) request a City Conditional Use permit for a Tavern and Drinking Establishment and an Entertainment Establishment and Nightclub in the City within 300 feet of residential zoning on property zoned LC Limited Commercial on property described as:

Lot 1, Block A, English Pub Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The application area, 801 South Seneca Street, is located on the west side of South Seneca Street and one block south of West Kellogg in LC Limited Commercial (LC) zoning and within 300 feet of residential zoning. The site is developed with a two-story building and 27 off-street parking spaces (see attached site plan). The County Tax Assessor lists “bar/tavern/lounge” as the current land use, and the business on the property advertises itself as Whiskey Dick’s. The site currently has a drinking establishment license allowing the sale of alcohol to exceed 50% of gross sales. A drinking establishment has functioned on the site for many years. The site also has an entertainment establishment license, allowing dancing and live entertainment. The combination of these two licenses makes this site a “nightclub in the city.” Nightclub in the city is defined by the Unified Zoning Code (UZC) as an establishment that provides entertainment and/or dancing, where alcoholic beverages are served and where food may or may not be served. The current nightclub is permitted in LC zoning, but is legal non-conforming under the UZC because it is within 300 feet of residential zoning. The UZC permits a nightclub in the city in the LC zoning district by right, but requires a conditional use if the property is located within 300 feet of a church, park, school or residential zoning district. The application area is adjacent to multi-family residential zoning and single-family residential development to the south and east of the site.

North of the site is the Kellogg Expressway. Property south of the site is zoned MF-29 Multi-family Residential (MF-29) and developed with single-family residences. The site has a screening fence along the south property line. Property east of the site, across Seneca Street, is zoned MF-29 and developed with single-family residences and a vehicle repair shop. Property immediately west of the site, across an alley, is zoned NO Neighborhood Office (NO) and developed with a duplex. A full screening fence does not exist along the west side of the site. Further west is property zoned MF-29 and developed with single-family residences.

CASE HISTORY: The site was platted as the English Pub Addition to Wichita in 1982. The building on the property was built in 1930.

ADJACENT ZONING AND LAND USE:

| | |
|-----------------|--|
| North: None | Kellogg Expressway |
| South: MF-29 | Single-family residences |
| East: MF-29 | Vehicle repair, single-family residences |
| West: NO, MF-29 | Duplex, single-family residences |

PUBLIC SERVICES: South Seneca Street is a paved arterial street with four lanes and a center left turn lane at this location.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the Community Investments Plan, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's 2035 Wichita Future Growth Concept Map identifies this location as "residential." The UZC requires one parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 95 people. The applicant's site plan demonstrates 27 parking spaces, 21 fewer than required. The applicant will require some combination of parking reduction through an adjustment or variance which could be combined with a parking agreement with a nearby property to meet the UZC parking requirement. The site meets the UZC screening requirement where it abuts multi-family residential zoning to the south.

RECOMMENDATION: Staff notes that some form of drinking establishment has existed on this site for some time which does not appear to be incompatible with nearby residential uses. This application does not introduce a new use to the area. Staff notes that the site is screened from nearby residential properties. Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a Nightclub in the City be **APPROVED**, with the following conditions:

- (1) The applicant shall meet the UZC parking requirements by obtaining a parking reduction and/or securing an off-site parking agreement.
- (2) The applicant shall submit a revised site plan, to be approved by planning staff, which identifies required parking.
- (3) The site shall be developed and maintained in conformance with the approved site plan.
- (4) No outside loudspeakers or outdoor entertainment is permitted.
- (5) The site shall maintain all necessary licenses for a nightclub in the city.
- (6) The site shall conform to all applicable codes and regulations to include but not limited to zoning, building, fire and health.
- (7) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the site is the Kellogg Expressway. Property south of the site is zoned MF-29 Multi-family Residential (MF-29) and developed with single-family residences. The site has a screening fence along the south property line. Property east of the site, across Seneca Street, is zoned MF-29 and developed with single-family residences and a vehicle repair shop. Property immediately west of the site, across an alley, is zoned NO Neighborhood Office (NO) and developed with a duplex. A full screening fence does not exist along the west side of the site. Further west is property zoned MF-29 and developed with single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC and developed with a drinking establishment. The site could be developed with any permitted uses in the LC district and it could continue to be a legal non-conforming nightclub without the conditional use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is zoned LC and could be developed with any range of permitted uses in that district. The proximity of residential zoning triggers the conditional use review for a nightclub. Noise and activity from the nightclub could impact nearby residences; proposed conditions prohibiting outdoor speakers and entertainment should mitigate this impact. The request does not introduce a new use in the neighborhood. The limited size of the site and building will prevent expansion beyond a neighborhood scale, and proposed conditions should mitigate impacts on surrounding properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would presumably be an economic hardship upon the property owner, as the applicant owns the property and desires to operate the proposed business within LC zoning.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the Community Investments Plan, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's 2035 Wichita Future Growth Concept Map identifies this location as "residential." The UZC requires one parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 95 people. The applicant's site plan demonstrates 27 parking spaces, 21 fewer than required. The applicant will require some combination of parking reduction through an adjustment or variance which could be combined with a parking agreement with a nearby property to meet the UZC parking requirement. The site meets the UZC screening requirement where it abuts multi-family residential zoning to the south.
6. Impact of the proposed development on community facilities: The proposed Conditional Use should not impact community facilities to any greater extent other uses permitted in the LC zoning district.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

8. **Case No.: CON2016-00026** - Homer Morgan Revocable Trust, c/o Homer Morgan, trustee (applicant) and Stephen M. Joseph (agent) request a City Conditional Use permit for a Tavern and Drinking Establishment and an Entertainment Establishment and Nightclub in the City within 300 feet of residential zoning on property zoned LC Limited Commercial zoned property on property described as:

The North 80 feet of lots 1 and 2, Block 1, Martinson's 9th Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The application area, 2201 W. Douglas, is located south of Douglas and three blocks east of Meridian in LC Limited Commercial (LC) zoning and within 300 feet of residential zoning. The site is developed with a single-story commercial building, and the business advertising itself as The Metro Court occupies the east half of commercial building. Abutting the site to the east is a paved on-street parking in the Athenian right-of-way with enough space for seven (7) on-street parking spaces (see attached site plan). A drinking establishment has functioned on the site for many years, but the business is currently closed. The site currently in the process of obtaining a drinking establishment license allowing the sale of alcohol to exceed 50% of gross sales. A drinking establishment is permitted in LC zoning, but the site is legal non-conforming under the Unified Zoning Code (UZC) because it is within 300 feet of residential zoning. The conditional use application is proposed so that the site also has can attain an entertainment establishment license, allowing dancing and live entertainment. The combination of these two licenses would make this site a "nightclub in the city." Nightclub in the city is defined by the UZC as an establishment that provides entertainment and/or dancing, where alcoholic beverages are served and where food may or may not be served. The UZC permits a nightclub in the city in the LC zoning district by right, but requires a conditional use if the property is located within 300 feet of a church, park, school or residential zoning district. The application area is in a small commercial area surrounded by residential zoning in all directions.

North of the site is zoned SF-5 Single-Family Residential and TF-3 Two-Family Residential and is development with single family residences. The property immediately south of the site is zoned LC Limited Commercial is developed with a single-family residence. Further south of the site are properties zoned SF-5, TF-3, and B Multi-Family Residential that are developed with single-family residences, duplexes, and multi-family residences. Properties east of the site are zoned SF-5 and are developed with single-family residences. The properties immediately west of the site are zoned LC and are developed with commercial uses, a single-family residence, and a multi-family residence. Further west are properties zoned SF-5 and TF-3 that are developed single-family residences duplexes.

CASE HISTORY: The site was platted as the English Pub Addition to Wichita in 1982. The building on the property was built in 1930.

ADJACENT ZONING AND LAND USE:

| | |
|--------------------------|---|
| North: SF-5, TF-3 | Single-family residences |
| South: LC, SF-5, TF-3, B | Single-family residences, duplexes, and multi-family residences |
| East: SF-5 | Single-family residences |
| West: LC, SF-5, TF-3 | Commercial uses, multi-family, duplexes, single-family |

PUBLIC SERVICES: Douglas is a paved arterial street with two lanes and on-street parking on both sides of the street at this location.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the Community Investments Plan, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's 2035 Wichita Future Growth Concept Map identifies this location as "residential" and within the Delano Neighborhood Revitalization Plan Area. The Delano Neighborhood Revitalization Plan has an object to improve business opportunities along Douglas. The UZC requires one off-street parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 64 people. The building occupies the entire site; therefore, no off-street parking is provided. The applicant's site plan demonstrates seven (7) on-street parking spaces abutting the site in the Athenian right-of-way. The applicant will require a variance to reduce and/or waive the off-street parking requirement, which may be combined with an off-site parking agreement with a nearby property to meet the UZC parking requirement.

RECOMMENDATION: Staff notes that some form of drinking establishment has existed on this site for some time which does not appear to be incompatible with nearby residential uses. This application does not introduce a new use to the area. Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a Nightclub in the City be **APPROVED**, with the following conditions:

- (1) The applicant shall meet the UZC parking requirements by obtaining a variance to reduce and/or waive the off-street parking requirement, which may be combined with an off-site parking agreement with a nearby property to meet the UZC parking requirement.
- (2) The applicant shall submit a revised site plan, to be approved by planning staff, which identifies required parking.
- (3) The site shall be developed and maintained in conformance with the approved site plan.
- (4) No outside loudspeakers or outdoor entertainment is permitted.
- (5) The site shall maintain all necessary licenses for a nightclub in the city.
- (6) The site shall conform to all applicable codes and regulations to include but not limited to zoning, building, fire and health.
- (7) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the site is zoned SF-5 Single-Family Residential and TF-3 Two-Family Residential and is developed with single family residences. The property immediately south of the site is zoned LC Limited Commercial is developed with a single-family residence. Further south of the site are properties zoned SF-5, TF-3, and B Multi-Family Residential that are developed with single-family residences, duplexes, and multi-family residences. Properties east of the site are zoned SF-5 and are developed with single-family residences. The properties immediately west of the site are zoned LC and are developed with commercial uses, a single-family residence, and a multi-family residence. Further west are properties zoned SF-5 and TF-3 that are developed single-family residences duplexes.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC and developed with a drinking establishment. The site could be developed with any permitted uses in the LC district and it could continue to be a legal non-conforming drinking establishment without the conditional use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is zoned LC and could be developed with any range of permitted uses in that district. The proximity of residential zoning triggers the conditional use review for a nightclub. Noise and activity from the nightclub could impact nearby residences; proposed conditions prohibiting outdoor speakers and entertainment should mitigate this impact. The request does not introduce a new use in the neighborhood. The limited size of the site and building will prevent expansion beyond a neighborhood scale, and proposed conditions should mitigate impacts on surrounding properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would presumably be an economic hardship upon the property owner, as the applicant owns the property and desires to operate the proposed business within LC zoning.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the Community Investments Plan, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's 2035 Wichita Future Growth Concept Map identifies this location as "residential" and within the Delano Neighborhood Revitalization Plan Area. The Delano Neighborhood Revitalization Plan has an object to improve business opportunities along Douglas. The UZC requires one off-street parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 64 people. The building occupies the entire site; therefore, no off-street parking is provided. The applicant's site plan demonstrates seven (7) on-street parking spaces abutting the site in the Athenian right-of-way. The applicant will require a variance to reduce and/or waive the off-street parking requirement, which may be combined with an off-site parking agreement with a nearby property to meet the UZC parking requirement.

6. Impact of the proposed development on community facilities: The proposed Conditional Use should not impact community facilities to any greater extent other uses permitted in the LC zoning district.

BILL LONGNECKER, Planning Staff presented the Staff Report. He reported that DAB IV voted to deny the request and referred Commissioners to the DAB memo dated 8-2-16 which cited neighbors' concerns and various nuisance factors associated with drinking establishments including late night hours, loud music, and general bad behavior of the patrons of the club.

ELLISON asked about the other businesses in the strip center.

LONGNECKER said it is an unusual strip center and he believes parking may be a problem in keeping businesses there.

WARREN questioned the parking variance process and whether you can actually get 64 people in that club. He asked if this were an auto parts store would there be the same parking requirement.

LONGNECKER indicated that the parking variance was a separate process. He added that the Fire Marshall determines the occupancy of an establishment. He said an auto parts store could go at this location "by right" and would have no parking requirement. He said the parking requirement is part of the application for the conditional use.

STEPHEN JOSEPH, 500 NORTH MARKET, AGENT FOR THE APPLICANT said this location is a problem because of the parking. He clarified that the location was closed for about 11 months and reopened three weeks ago as a legal non-conforming use. He said the location does not need a conditional use permit to operate as it is operating now. He said his client is attempting to bring all of the establishments he owns into compliance with City zoning requirements. He said this is a neighborhood bar that has been there for 50 years. He said people don't drive there they walk there. He said they do not think the occupancy number for the establishment is correct and that is why they believe they can provide the necessary parking. He said this is a tiny bar. He said they are going to ask the Fire Department to come back and re-evaluate the occupancy. He said there is parking available behind the building next to the club, and they think they can get a shared parking agreement with that establishment which they believe will be enough parking if the occupancy is set correctly. He said this location does not get any Police calls. He concluded by stating that this is not a destination bar.

ELLISON asked what was located to the south of the club.

LONGNECKER said a residence.

ROSE WRIGHT, 111 SOUTH ATHENIAN said she lived right behind the bar and added that it has been closed for three years. She said she has had people urinating in her yard. She said the bar has been re-opened for just two weeks and she has had a lawn ornament stolen out of her yard. She said she has also had stuff stolen off of her front porch and windshields broken out of her vehicles. She said people

park in her driveway and a lot of other things. She said in the 18 years she has lived there the bar has changed hands several times and was even a strip joint once. She said the loud noise and music keep her awake at night so she can't get up and go to work. She added that there have been numerous Police calls to this location.

VINCENT HANCOCK, 406 SOUTH VINE, PRESIDENT DELANO NEIGHBORHOOD ASSOCIATION said he lives about a half mile from here. He mentioned the Staff Report and the reference to the Delano Neighborhood Revitalization Plan to improve commercial opportunities in the area. He said he agreed that this is an unusual retail cluster and he added that believes it does not belong in the residential neighborhood. He said the neighborhood complaints about this establishment were so severe that the previous Delano Neighborhood Association President who moved to New Jersey e-mailed him about this case. He said she wrote him that he hasn't heard half of what she heard about this location when she was neighborhood association president. He said the neighbors don't want this being used for its current use as a drinking establishment let alone adding entertainment establishment. He said this is just not an appropriate location for this activity.

JOSEPH reiterated that the location has not been closed for three years. He said there are public records of drinking establishment licenses and leases for that time period. He said if they had been closed that long they couldn't make a conditional use application because they would have lost the "grandfather clause." He said this location is "grandfathered" in and can continue as a drinking establishment until it is vacant for two years. He said they will try to do something to improve the parking.

DENNIS asked what was the plan for getting people from the parking lot to the facility without going through the neighbor's yard.

JOSEPH said his client owns property behind his building and will make a pathway from there to the sidewalk and north to the street.

ELLISON asked if the owner has considered other uses for the property other than a drinking establishment.

JOSEPH said he doubts his client has ever considered any other type of use. He said his client's principal business has been an automatic music company. He said he makes his money by owning taverns and drinking establishments and leasing them machines like juke boxes, pool tables, and those type of things.

DAILEY commented that the applicant should have made arrangements for parking before coming to the Planning Commission. He added just because the establishment had a license doesn't mean it was being operated. He said you can have a license on a car and not drive it. He asked about sales receipts and tax payments for the three-year period.

JOSEPH said the parking and other requirements are conditional on approval of the zoning. He said they are not going to take the time and effort to do those things and spend money until they know they can get the conditional use perm. He said that is the way the zoning process is set up. He said they have the required documentation such as rent payments, machine receipts and leases to prove that the establishment was open for business.

WARREN agreed this is a horrible place for this type of business, but it is there. He asked if the applicant would consider building a fence along the north and west property line. He said that might mitigate some of the neighbors' concerns.

JOSEPH said they are committed to do anything the Commission asks or suggests and added they would accept that as a condition. He said they have already discussed a fence north to south on the shared parking lot.

ELLISON clarified that the applicant would agree to erect a 6-8 foot screening fence.

DAILEY asked the neighbor if the fence along her property would help satisfy her concerns so people wouldn't be cutting across her yard.

WRIGHT asked who she holds responsible if there is damage to her property. She said all this is yet to be seen, she said the applicant doesn't even keep his own yard mowed.

FOSTER asked who owns the shared parking area.

JOSEPH said he doesn't know the owner's name, but pointed out that the strip center has several owners. He also clarified that they will build a fence running north and south behind the neighbor to the south's property so there will be no access to Mrs. Wright's yard in any way.

DENNIS asked if the Commission can legally require the applicant to build a fence on someone else's property.

LONGNECKER said under the UZC you can put screening on abutting properties if the LC zoning is separated from the properties by an alley. He said he believes it is doable with the property owner's consent.

WARREN clarified that the fence would not be on the neighbor's property.

MOTION: To approve subject to staff recommendation with installation of an 8-foot fence on the north and west property lines, and south property line of the neighbor; get permission of the property owner to the south to install a fence on her property; and require a parking agreement with the property owner to the west.

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

FOSTER commented on protecting the neighborhood and the Delano Plan and said the only alternative is to deny the conditional use application so he feels like they have two bad alternatives.

LONGNECKER reiterated that they can continue as a drinking establishment, this application just allows them an entertainment license so they will be in conformance with the UZC.

MILLER STEVENS commented that regardless of what the Planning Commission decides on this application, people are going to be in this establishment drinking. She said today's motion provides some level of protection for the neighbor. She said anything the Commission decides today is not going to get rid the neighborhood of the drinking establishment.

ELLISON asked about a time frame maybe six months.

WARREN AMENDED the **MOTION**, with permission of the second **TODD** that the changes in the motion needed to be completed before the applicant can operate as an entertainment establishment.

The **AMENDED MOTION** carried (7-1). **FOSTER** – No.

9. **Case No.: CON2016-00029** - Michael and Iris McCready (owners/applicants) request a City Conditional Use permit for an Accessory Apartment in SF-5 Single-family Residential zoning on property described as:

Lot 1, Maple Hill Addition, Sedgwick County, Kansas.

BACKGROUND: The applicants request a conditional use for an “accessory apartment” on the southeast corner of West platted SF-5 Single-Family Residential zoned lot located on the southwest corner of Maple Street and South Country View Lane. The site is developed with a 2,208-square foot single-story residence (built 1966) and a large garage. The applicant is converting a portion of the garage into an accessory apartment.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines an “accessory apartment” (Art. II.Sec. II-B.1.b) as a dwelling unit that may be wholly within, or may be detached from a principal single-family dwelling unit. Accessory apartments are also subject to supplementary use regulation Art. III.Sec.III-D.6.a (1) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling unit that may be within the main building, within an accessory building or constructed as an accessory apartment; (2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; (3) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold as a condominium and (4) the water and sewer service provided to the accessory apartment shall not be provided as separate service from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services.

The site is located in an area where Wichita and Sedgwick abut each other. The area the site is located in is zoned SF-5. SF-5 zoned single-family residences abut the south and west sides of the site. SF-5 zoned single-family residences are adjacent, across Country View Lane, to the east side of the site. The single-family residences in these areas were built in the mid to late 1960s up to as recently as 2007. SF-5, SF-20 Single-Family Residential and RR Rural Residential zoned properties are located north of the site, across Maple Street. Development in the area north of the site include partially developed urban scale subdivisions (recorded May 8, 2003 & March 15, 2006), two single-family residences (built 1978, 1986) on large tracts and agricultural land. An anomaly to the development in the area is a LC and SF-5 zoned recreational vehicle (RV) campground that may have been established in 1965.

CASE HISTORY: The subject property is described as Lot 1, Maple Hill Addition, which was recorded with the Register of Deeds January 5, 1965.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|-----------------|--|
| NORTH: | SF-5, SF-20, RR | Single-family residences, large tract single-family residences, agricultural land, RV campground |
| SOUTH: | SF-5 | Single-family residences |
| EAST: | SF-5 | Single-family residences |
| WEST: | SF-5 | Single-family residences |

PUBLIC SERVICES: The property is serviced by all publicly supplied municipal services. The site has access onto Country View Lane, a sand and gravel residential street. Country View Lane intersects with the paved, two-lane arterial Maple Street.

CONFORMANCE TO PLANS/POLICIES: The "2035 Wichita Future Growth Concept Map" shows the site and the area it is located in as "residential." The residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to, single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, small parks and other similar residential- serving uses are located in these areas. The site is located outside of the established central area of Wichita. An accessory apartment may be considered as a conditional use in the SF-5 zoning district, which is a common request.

RECOMMENDATION: The surrounding area has well-established residential land uses. Based on information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the following conditions:

1. The Conditional Use permits one single-family accessory apartment on the site. The site shall be developed and maintained in general conformance with the approved site plan, the approved elevation drawing, and in conformance with all applicable regulations, including but not limited to: local zoning, including Article III, Section III-D.6 .a.(1)-(4); building, fire and utility regulations or codes.

2. An approved site plan for the entire lot and an elevation drawing approved by planning staff, indicating dimensions and exterior materials.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located in an area where Wichita and Sedgwick abut each other. The area the site is located in is zoned SF-5. SF-5 zoned single-family residences abut the south and west sides of the site. SF-5 zoned single-family residences are adjacent, across Country View Lane, to the east side of the site. The single-family residences in these areas were built in the mid to late 1960s up to as recently as 2007. SF-5, SF-20 Single-Family Residential and RR Rural Residential zoned properties are located north of the site, across Maple Street. Development in the area north of the site include partially developed urban scale subdivisions (recorded May 8, 2003 & March 15, 2006), two single-family residences (built 1978, 1986) on large tracts and agricultural land. An anomaly to the development in the area is a LC and SF-5 zoned recreational vehicle (RV) campground that may have been established in 1965.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned SF-5 which permits the existing single-family residence. The SF-5 zoning is characteristic of the area's zoning. An accessory apartment may be considered as a conditional use in the SF-5 zoning district, which is a common request.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2035 Wichita Future Growth Concept Map" shows the site and the area it is located in as "residential." The residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to, single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, small parks and other similar residential-serving uses are located in these areas. The site is located outside of the established central area of Wichita. An accessory apartment may be considered as a conditional use in the SF-5 zoning district, which is a common request.
5. Impact of the proposed development on community facilities: If this request is approved, the site is served by municipal services that are able to accommodate projected demand created by this request.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

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10. **Case No.: CON2016-00036** - John and Kathy Wills (owner/applicant) request a County Conditional Use permit to allow a Bed and Breakfast in the RR Rural Residential zoning district on property described as:

N 630 FT S 1290 FT W 660 FT SW 1/4 EXC W 40 FT FOR RD SBC 15-29-2E, SEDGWICK COUNTY, KANSAS

BACKGROUND: The applicants are requesting a Conditional Use on a site zoned RR Rural Residential to allow a Bed and Breakfast Inn to be operated at their current residence at 9400 S. Greenwich Road. The lot is 9 acres in size and is located on the east side of Greenwich Road 1,080 north of 95th Street South. The residence has four available bedrooms (suites) and the applicants wish to utilize them for the Bed and Breakfast.

The site plan indicates the primary structure built in 1975 and a barn. There is a half-circle gravel drive off Greenwich Road to the front entrance that accesses 93rd Street South. The site has an existing two-car attached garage, a concrete parking apron and an all-weather surface drive that can accommodate parking. According to the UZC, a Bed and Breakfast is an owner-occupied or manager-occupied residential structure that provides rooms for temporary lodging or lodging and meals for not more than 15 transient guests on a paying basis. A transient guest is a person who occupies a room for a period of less than one week at a time.

The surrounding properties are all zoned RR and have single family residential with associated agricultural land.

CASE HISTORY: The property is an unplatted nine acre tract described as N 630 FT S 1290 FT W 660 FT SW1/4 EXC W 40 FT FOR RD. SEC 15-29-2E along the north edge of the property has been vacated. The property to the north at 9330 S. Greenwich Road had a Conditional Use approved for an accessory apartment (CON2008-00014).

ADJACENT ZONING AND LAND USE:

| | | |
|--------|----|--------------------------------------|
| NORTH: | RR | Single-family residence, 4.5 acres |
| SOUTH: | RR | Single-family residences, 8.8 acres |
| EAST: | RR | Single-family residences, 81.9 acres |
| WEST: | RR | Agricultural land, 154.4 acres |

PUBLIC SERVICES: Access to the site is from S. Greenwich Road and E. 93rd Street. South Greenwich Road is a two-lane arterial with 80 feet of right-of-way and 25 feet of paved width. East 93rd Street is a private, 20-foot wide gravel road. Neither road has recent traffic counts. The site is served by a sewage lagoon and located in Sedgwick County Rural Water District 03.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Small City Urban Growth Area. The Plan's *2035 Urban Growth Areas Map* indicates the likely direction and magnitude of growth these communities can expect to experience out the year 2035. Determination of growth direction and amount is based upon municipal political considerations, anticipated population growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

The Unified Zoning Code ("UZC") allows Bed and Breakfast as a Conditional Use in the residential zoning districts in compliance with UZC site requirements for parking, screening, lighting, and compatibility setback standards and with Landscape Ordinance requirements. No specific requirements are specified for Bed and Breakfast Inn other than the stipulation that it be an owner-occupied or manager-occupied structure.

RECOMMENDATION: Based upon information available prior to the public hearing, Staff recommends that the Conditional Use request for a five suite Bed and Breakfast be **APPROVED**, subject to the following conditions:

1. The site shall be developed and operated in general conformance with the MAPD approved site plan.
2. Construction of improvements shall be completed within one year of approval by the appropriate governing body.
3. The applicant shall obtain all inspections, permits and licenses from the County, prior to operating the bed and breakfast inn.
4. The owner or the manager of the bed and breakfast inn shall reside in the primary structure.
5. There shall be four rooms designated for the bed and breakfast business. These rooms shall be shown on a floor plan required for approval by the Metropolitan Area Building and Construction Department (MABCD) for a change of occupancy to bed and breakfast inn within a single-family residential structure.
6. All signage shall conform to the Sedgwick County Sign Code.
7. Parking spaces shall be provided onsite as indicated on the approved site plan. The parking area shall be in compliance with Sedgwick County requirements.
8. 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 surrounding properties are zoned RR Rural Residential. Large acre lots with single family residences and agricultural land.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned RR and is developed with a single-family residence. It could continue to be used as a single-family dwelling.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The Conditional Use for a bed and breakfast will encourage continued maintenance of the current structure.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Comprehensive Plan identifies this property as “Small City Urban Growth Area.” The Unified Zoning Code permits bed and breakfast inn as a Conditional Use when it is determined to be an appropriate site for this type of use and when the bed and breakfast inn can meet site development requirements of the Conditional Use and UZC. The conditions of approval are designed to meet these criteria.
5. **Impact of the proposed development on community facilities:** The impact on community facilities should be minimal so long as all required parking is onsite and is adequately paved. No impact is anticipated on other utilities.

KATHY MORGAN, Planning Staff presented the Staff Report.

KATHY WILLS, 9400 SOUTH GREENWICH ROAD said they wanted to use a couple of the bedrooms in the home to generate additional income. She said they are doing some spritzing up with paint and minor repairs but no building additions.

ELLISON asked if they were going to supply meals.

WILLS said the decision to submit the application was a quick one. She has since found out from the State Health Department that if they have fewer than eight guests they don't have to have health inspections if they did provide food. She said they did not intend to prepare meals but would provide kitchen facilities for the client's own use.

FOSTER asked if they would have continued access along 93rd Street.

WILLS said since that blocks their property their neighbors are legally required to provide egress rights.

DENISE EVANS, 11420 E. 95th ST., SOUTH said she lives on the corner and does not want a B&B out there. She said they do not want strangers in the area and that her home has been broken into twice and there have been other break ins in the area. She said several of the surrounding neighbors are totally against this. She also mentioned that a B&B usually offers some type of activity such as walking paths, hunting, fishing, etc., but there is nothing for them to do out there. She said this is not the place for a B&B. She said they just had a large B&B close in the area.

BOB KENNDY, 240 S GREENWICH ROAD said he has lived in the area for 22 years. He said he is concerned about transient people in the neighborhood. He said right now this is a quiet, peaceful area and he would like to see it stay that way. He said he can appreciate the need for extra income but these are all well maintained residential properties in the area. He said he does not believe this is the location for a B&B.

WILLS said there may be siblings in from out of town for a family y gathering who can't get a room at the Hampton Inn. She said this is a way to provide an alternative without sending people to Wichita. She said they don't expect to have people tramping in at all hours of the day and night, they thought perhaps having guests 6-7 days a month would help them break even. She said she would appreciate the Commissions consent.

WARREN said he doesn't know if they are going to succeed and that is not the Commissions concern that in this country you get the opportunity to try. He said he thinks success will be based on service and prices. He said people who live in the City want to get away from it so the draw will be the open space.

DAILEY asked about the length of time someone can stay at the B&B.

MORGAN said not more than five days. She said someone can't come and live there for a month.

There was discussion concerning an "air B&B".

MORGAN said an Air B&B is not mentioned in the UZC so they would be operating without zoning approval.

MOTION: To approve subject to staff recommendation.

WARREN moved, **TODD** seconded the motion, and it carried (8-0).

11. **Case No.: CON2016-00037** -- Nicoleta and Eugene Vasilescu (owners) request a County Conditional Use permit for an Accessory Apartment in SF-20 Single-family Residential zoning on property described as:

Beginning at a point on the East line of the Southeast Quarter of Section 21, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, and 493.43 feet South of the Northeast corner of the Southeast Quarter of said Section 21; thence South along the East line of the Southeast Quarter of said Section 21, 15.0 feet; thence West parallel with the North line of the Southeast Quarter of said Section 21, a distance of 330.0 feet; thence South parallel with the East line of the Southeast Quarter of said Section 21, a distance of 154.0 feet; thence West parallel with the North line of the Southeast Quarter of said Section 21, a distance of 243.88 feet; thence North parallel with the East line of the Southeast Quarter of said Section 21, a distance of 298.0 feet; thence East parallel with the North line of the Southeast Quarter of Section 21, 298.88 feet; thence South parallel with the East line of the Southeast Quarter of said Section 21, 129.0 feet; thence East 284.9 feet to the point of beginning.

BACKGROUND: The applicant is requesting a Conditional Use for an accessory apartment to be on the site. The unplatted property is zoned SF-20 Single-Family Residential and is approximately 1.9 acres. It is currently developed with a residential designed manufactured single-family home, three sheds, a barn and well house. The site is serviced by a septic system. The subject site is located on the west side of Ridge Road approximately 0.4 mile north of 45th Street North. The Sedgwick County site is not located within any Urban Area of Influence.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines an “accessory apartment” (Art. II.Sec. II-B.1.b) as a dwelling unit that may be wholly within, or may be detached from a principal single-family dwelling unit. Accessory apartments are also subject to supplementary use regulation Art. III.Sec.III-D.6.a (1) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling unit that may be within the main building, within an accessory building or constructed as an accessory apartment; (2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; (3) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold as a condominium and (4) the water and sewer service provided to the accessory apartment shall not be provided as separate service from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services.

The surrounding properties to the north, west and south are zoned SF-20. The uses include single-family residences. Across Ridge Road to the east is a single-family residential subdivision zoned SF-20

The applicant submitted the attached site plan showing the location of existing structures, well and the septic system. The site plan also identifies the location of the new 45-foot X 36-foot accessory apartment with a 25-foot X 30-foot attached garage.

CASE HISTORY: The subject property is unplatted.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|-------|--|
| NORTH: | SF-20 | Single-family residence on 2.6 acres |
| SOUTH: | SF-20 | Single-family residence on 5 acres |
| WEST: | SF-20 | Single-family residence on 9 acres; undeveloped 16 acres |
| EAST: | SF-20 | Single family residences on 0.5 and one-acre lots. |

PUBLIC SERVICES: Ridge Road is a four-lane paved arterial street. The subject site has access to Ridge from a 230-foot long single lane gravel drive. The property is served by septic system and an on-site water well.

CONFORMANCE TO PLANS/POLICIES: The “2035 Community Investments Plan” (Plan) identifies the subject site as being in the Wichita Urban Growth Area.

This category identifies Wichita’s urban fringe areas that have the potential to be developed by the year 2035, based upon Wichita population growth projections and current market trends. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

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

1. The accessory apartment shall remain accessory to and under the same ownership as the principal single-family residence (located at 4917 N. Ridge Road) and the ownership shall not be divided or sold as a condominium. The appearance of the accessory structure shall be compatible with the main dwelling.

2. The water and sewer service provided to the 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.
3. 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 accessory apartment.
4. Development and maintenance of the site shall be in conformance with the approved site plan.
5. If the accessory apartment is not in place within 12 months after final 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 area with lots ranging from +/- 0.5 acre to 16 acres. Development is a mix of large lot single-family residential.
2. **The suitability of the subject property for the uses to which it has been restricted:** The subject site is currently zoned SF-20 which permits the existing single-family residence. The property could continue to be used for one single-family residence; the depth of the property easily accommodates an accessory apartment and the additional required parking space.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the request should not detrimentally impact nearby properties. The conditions of approval should minimize any anticipated detrimental impacts.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2035 Community Investments Plan” (Plan) identifies the subject site as being in the Wichita Urban Growth Area. This category identifies Wichita’s urban fringe areas that have the potential to be developed by the year 2035, based upon Wichita population growth projections and current market trends. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors. A Conditional Use application/request is required for consideration of an accessory apartment in the SF-20 zoning district.

5. **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.

KATHY MORGAN, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

12. **Case No.: CON2016-00038** - Metal Arts Properties, LLC (owners) and Alissa Huibsch (applicant) request a City Conditional Use permit for a Group Residence Limited in SF-5 Single-family Residential zoning for property described as:

Lot 1 except the East 60 feet, Schlender Addition, Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant requests a conditional use to operate a group residence, limited, for nine male residents on the SF-5 Single-Family Residential (SF-5) zoned site located on the southeast corner of West 31st Street North and North Hood Avenue. Per the Unified Zoning Code (UZC, Sec.II-B.5.k), a group residence, limited, is a residential facility occupied by six to 15 persons providing cooking, sleeping and sanitary accommodations for a group of people, not defined as a family, on a weekly or longer basis. Typical uses include fraternity or sorority houses, dormitories, residence halls, boarding or lodging houses, children's homes, and emergency shelters for the homeless and for victims of crime, abuse or neglect.

The UZC requires the consideration of a conditional use for a group residence, limited in the SF-5 zoning district and in all residential zoning districts with one exception. A group residence, limited, is allowed by right in the B Multi-Family Residential (B), GO General Office (GO), NR Neighborhood Retail (NR), LC Limited Commercial (LC), GC General Commercial (GC), CBD Central Business District (CBD) and the AFB Air Force Base (AFB) zoning districts. The term group residence does not include Group Homes or Correctional Placement Residences; UZC, Sec.II-B.5.i and Sec.II-B.5.k. A group of not more than five persons (excluding servants) not related by blood or marriage, may live together as a single housekeeping unit in a dwelling unit/ single-family residence; UZC Sec.II.B.4.n.

The applicant has stated that the group residence will be an Oxford House. Per the Oxford House web site:

Oxford House is a concept in recovery from drug and alcohol addiction. In its simplest form, an Oxford House describes a democratically run, self-supporting and drug free home. Oxford House, Inc., is the national, non-profit umbrella organization which provides the network connecting all Oxford Houses and allocates resources to duplicate the Oxford House concept where needs arise. The number of residents in a House may range from six to fifteen. There are houses for men, houses for women, and houses which accept women with children. A house with a mix of men and women is not allowed. There are no resident counselors in an Oxford House. A recovering individual can live in an Oxford

House for as long as he or she does not drink alcohol, does not use drugs, and pays an equal share of the house expenses. The average stay is about a year, but many residents stay three, four, or more years. There is no pressure on anyone in good standing to leave. While Oxford House is not affiliated with Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), its members realize that recovery from alcoholism and drug addiction can only be assured by the changing of their lifestyle through full participation in AA and NA. The Oxford House concept in recovery was established in 1975.

The site is developed with an eight bedroom, four bathroom, 2,086-square foot single-story, brick and lap siding single-family residence (built 1983). The applicant has stated that there will be one resident per bedroom in seven bedrooms and one bedroom with two residents. On-site parking is provided by what looks like a double-wide, paved drive way and a gravel parking lot located on the west side of the site, along Hood Avenue. No size was given on the site plan for the west gravel parking area, which may be encroaching into the Hood Avenue right of way. The UZC requires one parking space per bedroom for a group residence. The proposed site requires eight parking spaces. Because the site plan does not give the size of the parking areas and does not confirmed that the west parking area is not encroaching into Hood Avenue, staff cannot confirm that the required on-site parking is provided.

The site is located in a large area, from 29th Street North to 37th Street North, from the west side of the Little Arkansas River to Arkansas Avenue, of almost unbroken SF-5 zoned single-family residences. The exceptions are scattered LC zoned properties located along the arterials 29th Street North and Arkansas Avenue, maybe four TF-3 zoned properties, a B zoned property and a group of three properties zoned GC and GO. Staff found no apparent conditional uses located in the area's the SF-5 zoned properties. SF-5 zoned single-family residences about the east and south sides of the corner site. SF-5 zoned single-family residences are located adjacent to the west, across Hood Avenue, and north, across 31st Street North, sides of the corner site. The appraiser's link shows the single-family residences located closest to the site being built over a wide time frame, from 1937-1992.

CASE HISTORY: The site is located on Lot 1 except the east 60 feet, Schlender Addition, which was recorded with the Register of Deeds on April 2, 1982. The area was annexed into the City between 1961-1970.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|------|--------------------------|
| NORTH: | SF-5 | Single-family residences |
| SOUTH: | SF-5 | Single-family residences |
| EAST: | SF-5 | Single-family residences |
| WEST: | SF-5 | Single-family residences |

PUBLIC SERVICES: The site has access onto Hood Avenue, a sand and gravel residential street and 31st Street North a paved, two-lane, residential street. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "2035 Wichita Future Growth Concept Map" shows the site and the area it is located in as "residential." The residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to, single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses,

apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, small parks and other similar residential- serving uses are located in these areas. The site is located outside of the established central area of Wichita.

RECOMMENDATION: The intent of the proposed group residence, limited is provide peer group assistance for the recovery from drug and/or alcohol addiction based on and supported by a national organization, Oxford House. The UZC allows consideration of a group residence, limited as a conditional use in all of the residential zoning districts with the exception of the B zoning district, which allows it by right. The proposed site provides a residence for a maximum of nine adult men recovering from drug and/or alcohol addiction located in, as previously stated, a large mostly unbroken neighborhood of SF-5 zoned single-family residences. The Oxford House web site states that the average stay in such a residence is about a year, but many residents stay three, four, or more years. Based on this length of residency, the proposed facility's residential population is more transient in its nature, which would seem to be like the residency of multi-family development and not (as usually argued) a single-family neighborhood where the length of residency may be longer based on the ownership living on-site. Multi-Family residential and non-residential zoning would seem to be a more appropriate zoning for the proposed use. A neighborhood with a more diverse zoning pattern would also be a more appropriate neighborhood than the one the proposed site is located in. Based upon the information available prior to the public hearings, planning staff recommends that the request for a conditional use be **DENIED.**

This recommendation is based on the following findings.

- (1) **The zoning, uses and character of the neighborhood:** The site is located in a large area, from 29th Street North to 37th Street North, from the west side of the Little Arkansas River to Arkansas Avenue, of almost unbroken SF-5 zoned single-family residences. The exceptions are scattered LC zoned properties located along the arterial 29th Street North and Arkansas Avenue, maybe four TF-3 zoned properties, a B zoned property and a group of three properties zoned GC and GO. Staff found no apparent conditional uses located in the area's the SF-5 zoned properties. SF-5 zoned single-family residences about the east and south sides of the corner site. SF-5 zoned single-family residences are located adjacent to the west, across Hood Avenue, and north, across 31st Street North, sides of the corner site. The appraiser's link shows the single-family residences located closest to the site being built over a wide time frame, from 1937-1992.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-5, which is meant to accommodate low to moderate-density, single-family residential development and complementary land uses within the City of Wichita. The SF-5 zoned site could be developed as single-family by right.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** If approved the request would introduce a new use to the SF-5 zoned single-family residential neighborhood. Approval of the proposed conditional use would permit the site to become group residence, limited, specifically a facility that provides peer group assistance for the recovery from drug and/or alcohol addiction based on and supported by a national organization, Oxford House. The average stay in such a residence is about a year, but many

residents stay three, four, or more years. Based on this length of residency, the proposed facility's population is more transient in its nature, which would seem to be like the residency of multi-family development and not (as usually argued) a single-family neighborhood where the length of residency may be longer based on the ownership living on-site. Multi-Family residential and non-residential zoning would seem to be a more appropriate zoning for the proposed use. A neighborhood with a more diverse zoning pattern would also be a more appropriate neighborhood than the one the proposed site is located in.

- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2035 Wichita Future Growth Concept Map" shows the site and the area it is located in as "residential." The residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to, single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, small parks and other similar residential-serving uses are located in these areas. The site is located outside of the established central area of Wichita.

The UZC classifies a group residence, limited, as a residential use. The UZC requires consideration and approval of a conditional use to operate a group residence, limited, on the SF-5 zoned land.

- (5) **Impact of the proposed development on community facilities:** Approval of this request will have a minimal impact on community facilities.

However if the MAPC feels the conditional use is appropriate, staff recommends the following conditions, with the MAPC making findings for their approval:

- (1) The group residence, limited, is for a maximum of nine adult males for recovery from drug and alcohol addiction under the concept and affiliation of Oxford House, Inc.
- (2) Prior to occupancy the residence must be approved by the Wichita Fire Department, the Metropolitan Area Building and Construction Department and any other applicable federal, state and local standards.
- (3) The site will developed with an approved revised site plan. The site plan shall include, but not be limited to, an on-site paved parking area that conforms to the UZC's parking standards for one parking space per resident. The site plan must be submitted for review within 30-days of approval by the appropriate governing body.
- (4) The applicant shall obtain all required federal, state, local and other applicable permits and inspections.
- (5) The site shall be developed as shown on the approved site plan, within 60 days of approval by the appropriate governing body or the conditional use shall be declared null and void.

- (6) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

BILL LONGNECKER, Planning Staff presented the Staff Report. He said an application for a Group Residence was what was submitted by the applicant. He referred to a hand out from an attorney that staff received earlier this afternoon, which he said he would have the City Attorney deal with. He reported that the DAB recommended denial at the 8-1-16 meeting. He added that unfortunately the applicant did not attend that meeting and could participate in the dialogue.

SEAN HIPPS, METAL ARTS PROPERTIES indicated that they were not aware of the meeting on Monday and did not make a conscious decision not to attend and would be happy to explain what they are requesting. He indicated that they were passing out a packet to address questions they have become aware of. He said he had a letter from the City dated 2011 that indicates they are allowed eight residents. He said they would like to increase that to nine residents. He gave a brief background stating that they purchased this Oxford House about two years ago. He said he believes they need more Oxford Houses and every room is important to them. He clarified that he did not speak on behalf of Oxford House, just as a representative of Metal Arts Properties. He mentioned that the City recommended that they go through this process. He said he knows an alumni from this house who is now a taxpayer and a contributing member of the community and if this room were not available, maybe that would not be the case.

DUSTIN GRAY, METAL ARTS PROPERTIES, 14620 WEST VALLEY HI COURT said Metal Arts is a family owned business. He mentioned that he was an alumni of Wedgwood Oxford House and believes he owes them his life which is why Metal Arts Properties stepped in and bought the location when they heard they were in trouble. He briefly explained how Oxford Houses were run and that they were not a half-way house but self-governed and more like a family. He also clarified that he could not speak for Oxford House. He said they are here because the City asked them to make the application. He said this Oxford House has been in operation for 21 years. He said it has been a positive influence on the neighborhood and one of the nicest homes in the neighborhood. He said there are seven members currently residing in the house. He briefly reviewed a diagram of the bedrooms and bathrooms in the house and said it is spacious and accommodating. He said parking has never been an issue and that there were seven parking spaces that are rarely full because some of the residents of the House may not have a driver's license or a car. He said other homes in the neighborhood use the street for parking.

GRAY said people get scared when they hear the terms addict and alcoholic but he said these diseases affect all classes, races and genders from the top of the social order to the bottom. He said Oxford Houses have proven to be a good resource for people in recovery and have an extremely high success rate. He said he was the owner of Metal Arts and employed over 30 people so he is giving back to the community. He said they would like the nine beds so they can help more people.

HIPPS requested that the application be approved without any of the staff recommendations except that they will never go above nine occupants.

MILLER STEVENS asked what led to the City's request that they submit this application.

GRAY said he believed it was fallout over an Oxford House located in College Hill.

MILLER STEVENS clarified then they have had more than eight people in the house prior to this.

GRAY said yes they have had nine beds for well over 12 years, but that doesn't mean there are always nine members in the house. He explained the interview process and requirement for 100% sobriety and indicated that if residents drink or use drugs they are gone. He said Oxford Houses have a no tolerance policy.

MILLER STEVENS said so Oxford House has no permit for a group residence because they are just renting the house from Metal Arts.

GRAY said that was correct and added that he used to sit in on meetings at the house to give advice, etc., but since he has become a landlord, that is a conflict of interest. He referred to the letter from the Oxford lawyer referencing the Fair Housing Act and that Oxford Houses are treated as family dwellings because addicts are considered disabled.

WARREN asked how many Oxford Houses are located in Wichita.

GRAY said he was not sure but he thinks about 29 houses. He added that Oxford House had their annual convention in Wichita several years ago.

JOHN AGNEW, 116 N. MARLEN, HAYSVILLE said he was a member of the Oxford House Alumni Association. He said he was present to ask the Commission to consider letting the location have nine members. He said some of the reasons are economics; how many people does it take to run the house in addition to policing each other. He said making it affordable for someone to live in an Oxford House is part of the equation. He said they want to provide low cost housing in nice neighborhoods for people seeking recovery. He said Oxford houses have always had to face the issue of "NIMBY" "Not In My Back Yard." But they want to blend in with the neighborhood, not stick out like a sore thumb.

AGNEW gave a brief over view of the success rate of Oxford Houses (65%-87%), services offered for both men and women and women with children. He said some of the homes are located in zoning that allows more than eight individuals. He commented that the Staff Report refers to the transient nature of Oxford House residents, but said some people stay at a House between 4-5 years. He said as Co-Chair of one of the Governor's Behavioral Health Subcommittees and working with Substance Abuse of Kansas he can say that the City and State use Oxford Houses as a resource. He referenced the City's Drug Court and Federal and State Departments of Community Corrections. He concluded by asking the Commission to allow nine residents at this location.

VERONICA CASADOS, 3257 HOOD COURT said she lives one and half blocks from this site. She commented that the community didn't know about this proposal until last Wednesday when the sign was posted about the rezoning with a number of call. She said they quickly gathered some residents in the neighborhood to attend the DAB meeting held Monday. She said the neighborhood was under the

impression that there were only five people in the house and most of the community is supportive of that. She said their biggest concern is raising this to nine people because they feel it becomes a density issue not only for the neighborhood but she questioned whether having nine people in a 2,000 square foot house is a supportive living environment, especially nine people who are struggling with addiction. She said five residents is fine with the neighborhood, nine residents is not.

DAILEY asked if there have already been between 8-9 people at the location and things have been going okay what is her objection.

CASADOS said they don't know how many people have been living there, they have heard many different things. She said it is evident there is more activity at the house and more parking in the street.

REVEREND BRIAN HITCHCOCK, 1055 WEST 35TH STREET NORTH said he lives at the Wedgwood Oxford House and in the last 18 months he has been there the only time the police came was to check on the welfare of one of the residents. He said the house has always had 8-9 members. He said this facility has saved his life. He said he believes the application should be approved. He said Oxford houses are needed in this town because they need more beds. He briefly reviewed the inner workings of the Oxford House.

PATRICK _____, 1055 WEST 35TH STREET NORTH said he also resides at the Wedgwood Oxford House. He briefly reviewed the inner workings of the house referencing the interview process. He said they are a tightknit group, like brothers living together who are serious about recovery. He asked that the Commission allow them nine people because they need the beds in Wichita.

VICTOR _____, 2709 NORTH LORRAINE said he has been involved with Oxford Houses for about 15 years in various capacities as well as serving on several state wide committees on drug abuse and recovery. He said he also lived in an Oxford House for a little over two years and if it was not for that, he didn't know where he'd be. He briefly reviewed his experience during his stay at the facility reuniting with his family and children. He said nine people can provide each other with rehabilitation support and help each other get their lives back on track. He said Oxford Houses are self-supporting and don't live off the government. He gave several statistics regarding Oxford House participant's success rates, community involvement and becoming productive members of society. He said they would like to come to a reasonable solution and let them operate with nine members as they have been doing in the past.

MOTION: To approve subject to the alternative staff recommendation for a total of nine adult males.

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

DENNIS asked what was staff's reason for recommending denial of the application.

LONGNECKER said staff did not feel the density was appropriate for this Single-family neighborhood; however, he referred to the alternative staff recommendations listed on page five of the Staff Report if the Commission felt this was an appropriate use.

JEFF VANZANDT, ASSISTANT CITY ATTORNEY clarified that this was not a vote on Oxford Houses and he applauds what they do. He said a number of years ago the City received a complaint that there were 12-15 people living in a home in single-family zoning. He said that was in violation of the UZC. He said; however, under the Fair Housing Act and American with Disabilities Act (ADA) there has to be reasonable accommodation of someone with a disability. He said former alcoholics and/or drug abusers fall under the ADA. He said in order to make a reasonable accommodation the City looked at establishment of a “group home” as defined in State Statute. He briefly reviewed those requirements which were up to eight residents and two staff members. He added that Oxford House has no professional staffing. He mentioned case law Oxford House vs. the City of St. Louis and said financial considerations do not have to be taken into account. He said the house can have eight residents “by right” but if they want to go beyond that, the conditional use permit for a group home is required. He said this hearing is not a judgement on Oxford Houses or what they do this hearing is about current City Policy.

DAILEY clarified that Commissioner Warren was excluding the six conditions listed on page 5 of the Staff Report.

WARREN indicated that was correct and said he feels that they are just “bureaucratic pile ons.”

DENNIS said he didn’t have a problem with those other requirements and cannot support the motion as it stands. He said he would support the motion if everything recommended by staff was included.

The **MOTION** carried (6-2). **DAILEY** and **DENNIS** – No.

- 13. Case No.: CUP2016-00024** - Kellogg and West, LLC (owners/applicants) and Kim Edgington (agent) City CUP major amendment to DP-332 to expand the CUP land area and amend signage regulations on property described as:

Lots 8, 9 and 10, except that part taken for Highway in Condemnation Case 84C-2867, Block 1, Eureka Gardens, Wichita, Sedgwick County, Kansas.

CHAIR NEUGENT announced that the item was deferred.

NON-PUBLIC HEARING ITEMS

VICE CHAIR DENNIS said on behalf of the entire Planning Commission he wanted to express his deepest condolences to Director Dale Miller and his entire family on the loss of both his son and mother.

DENNIS commented that he has had the privilege of serving on the Planning Commission for nine years, originally appointed by Jeff Longwell and subsequently by Bryan Frye. He said he has learned a tremendous amount from Planning Staff who he said have provided outstanding administrative support to the Commission. He said he wanted to thank his fellow Commissioners and said it has been an honor and a privilege to serve with each and every one of them and a great experience.

The Metropolitan Area Planning Commission adjourned at 6:20 p.m.

State of Kansas)
Sedgwick County) ss

I, W. Dale Miller, 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 _____, 2016.

Dale Miller, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

DRAFT

STAFF REPORT

CASE NUMBER: SUB2016-00021 – BROOKFIELD ADDITION

OWNER/APPLICANT: 37th and Greenwich, LLC, Attn: Kevin Mullen, 8100 East 22nd Street North, Building 1000, Wichita, KS 67226

SURVEYOR/AGENT: Baughman Company, P.A., Attn: Kris Rose, 315 Ellis, Wichita, KS 67211

LOCATION: Southeast corner of East 37th Street North and North Greenwich Road (District II)

SITE SIZE: 118 acres

NUMBER OF LOTS

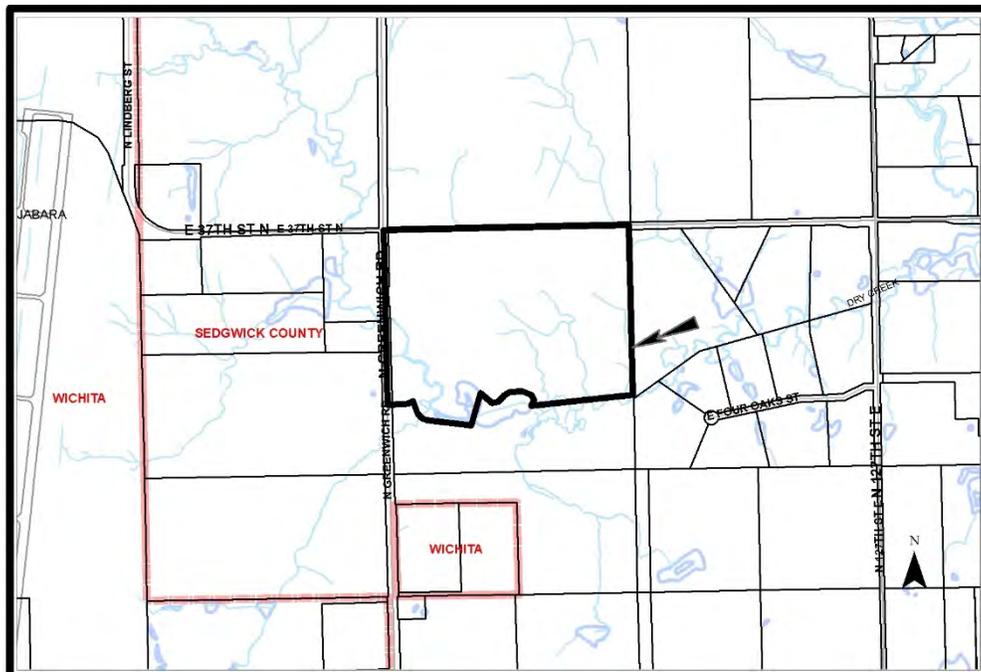
| | |
|--------------|-----|
| Residential: | 186 |
| Office: | |
| Commercial: | |
| Industrial: | |
| Total: | 186 |

MINIMUM LOT AREA: 9,450 square feet

CURRENT ZONING: Rural Residential (RR)

PROPOSED ZONING: Single-Family Residential (SF-5)

VICINITY MAP



SUB2016-00021 – Plat of BROOKFIELD ADDITION
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NOTE: This unplatted site is located in the County 322 feet north of Wichita's boundary. Upon the annexation of the property to the south (also owned by the applicant), this property will be eligible for annexation. The site is currently zoned Rural Residential (RR) and will be converted to Single-Family Residential (SF-5) upon annexation.

STAFF COMMENTS:

- A. Upon the annexation of the property to the south, the applicant for this plat shall apply for annexation to Wichita prior to this plat being forwarded to the City Council. Upon annexation, the property will be zoned Single-Family Residential (SF-5) and allow for the lot sizes being platted.
- B. City of Wichita Public Works and Utilities Department requires a guarantee for the extension of water (transmission and distribution) and sewer (mains and laterals) to serve all the lots being platted.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) along with the corresponding dollar amounts shall be submitted to the Planning Department for recording.
- D. City Stormwater Management advises the drainage plan is approved.
- E. County Public Works has approved the access controls. The plat proposes two street openings along 37th Street North and one street opening along Greenwich Road.
- F. Crest/Winston located in the northwestern corner of the plat is a one-block street segment with 19 lots on the north and west side of the street. The Subdivision Regulations indicate that no more than 12 lots per side in one block should be served by a 58-foot street segment. The Subdivision Committee recommends a modification of the design criteria in Article 7 of the Subdivision Regulations as it finds that the strict application of the design criteria will create an unwarranted hardship, the proposed modification is in harmony with the intended purpose of the Subdivision Regulations and the public safety and welfare will be protected.
- G. Brookview Court located in the southeastern portion of the plat is a one block street segment with 25 lots. The Subdivision Regulations indicate that no more than 24 lots in one block should be served by a 58-foot street segment. The Subdivision Committee recommends a modification of the design criteria in Article 7 of the Subdivision Regulations as it finds that the strict application of the design criteria will create an unwarranted hardship, the proposed modification is in harmony with the intended purpose of the Subdivision Regulations and the public safety and welfare will be protected.
- H. The applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- I. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineers (USACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.

SUB2016-00021 – Plat of BROOKFIELD ADDITION
September 29, 2016 - Page 3

- J. The Subdivision Committee recommended language in the restrictive covenant regarding City access to all reserves. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a restrictive covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. City Fire Department has approved the street length of Brookview Ct. (1,330 feet) which has been platted with an intermediate turnaround.
- M. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- N. Approval of this plat will require a waiver of the lot depth-to-width ratio of the Subdivision Regulations for various lots at the end of cul-de-sacs. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. The Subdivision Committee recommends a modification of the design criteria in Article 7 of the Subdivision Regulations as it finds that the strict application of the design criteria will create an unwarranted hardship, the proposed modification is in harmony with the intended purpose of the Subdivision Regulations and the public safety and welfare will be protected.
- O. GIS requests that Brookview Ct serving lots 52-76, Block F, be revised to Brookview Cir.
- P. Reserve "80" needs noted in the plattor's text in two places.
- Q. City Environmental Health Division advises that any wells installed on the property for irrigation purposes will have to be properly permitted, installed and inspected.
- R. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to tricia.robello@sedgwick.gov and nstrahl@wichita.gov.
- S. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- T. The plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

SUB2016-00021 – Plat of BROOKFIELD ADDITION
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- V. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- W. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. The applicant should check City or County GIS mapping to determine whether the location of any taxing district boundaries (e.g. school districts) crosses their property and plan accordingly to avoid unnecessary splitting of lots between taxing districts.
- BB. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- CC. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: kwilson@wichita.gov).

STAFF REPORT

CASE NUMBER: VAC2016-00035 - Request to vacate a portion of a platted utility easement

APPLICANT/OWNER: Gregory and Judy Gordon (applicant/owner)

LEGAL DESCRIPTION: Generally described as vacating all of the platted 10-foot wide by 23-foot (west side) – 27-foot (east side) long stub easement located on Lot 19, Block 1, Craig’s Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located midway between 31st Street South & I-135, on the northeast corner of K-15 and Crystal Street (3300 East Crystal Street - WCC III)

REASON FOR REQUEST: Build over unused easement

CURRENT ZONING: The site, all abutting and adjacent north, east and south, across Crystal Street, properties are zoned SF-5 Single-Family Residential. Adjacent west properties, across K-15, are zoned LI Limited Industrial.

VICINITY MAP:



The applicants are requesting the vacation of the platted 10-foot wide by 23-foot (west side) – 27-foot (east side) long stub easement located on Lot 19, Block 1, Craig’s Addition. There are no public utilities located within the subject easement. There does not appear to be Westar equipment located in the subject easement. Comments from other franchised utilities have not been received and are needed to determine if they have utilities located within the described easement. The Craig’s Addition was recorded April 8, 1950.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time September 8, 2016, 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 platted utility easement and that the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Provide a legal description of the vacated portion of the platted utility easement on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00035 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00035 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) As needed provided Public Works-Sewer (and any other utility located within the subject easement) with a private project plan for the relocation/abandonment of the sewer line and manholes located within the subject easement for review and approval. Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number to Planning prior to VAC2016-00035 proceeds to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants’ expense.

- (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

- (1) Provide a legal description of the vacated portion of the platted utility easement on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00035 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00035 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) As needed provided Public Works-Sewer (and any other utility located within the subject easement) with a private project plan for the relocation/abandonment of the sewer line and manholes located within the subject easement for review and approval. Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number to Planning prior to VAC2016-00035 proceeds to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants’ expense.
- (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.

STAFF REPORT

CASE NUMBER: VAC2016-00036 - Request to vacate the plattor's text to amend the uses allowed in a platted reserve

APPLICANT/OWNER: Sycamore Village Home Owners Association (applicant/owner)

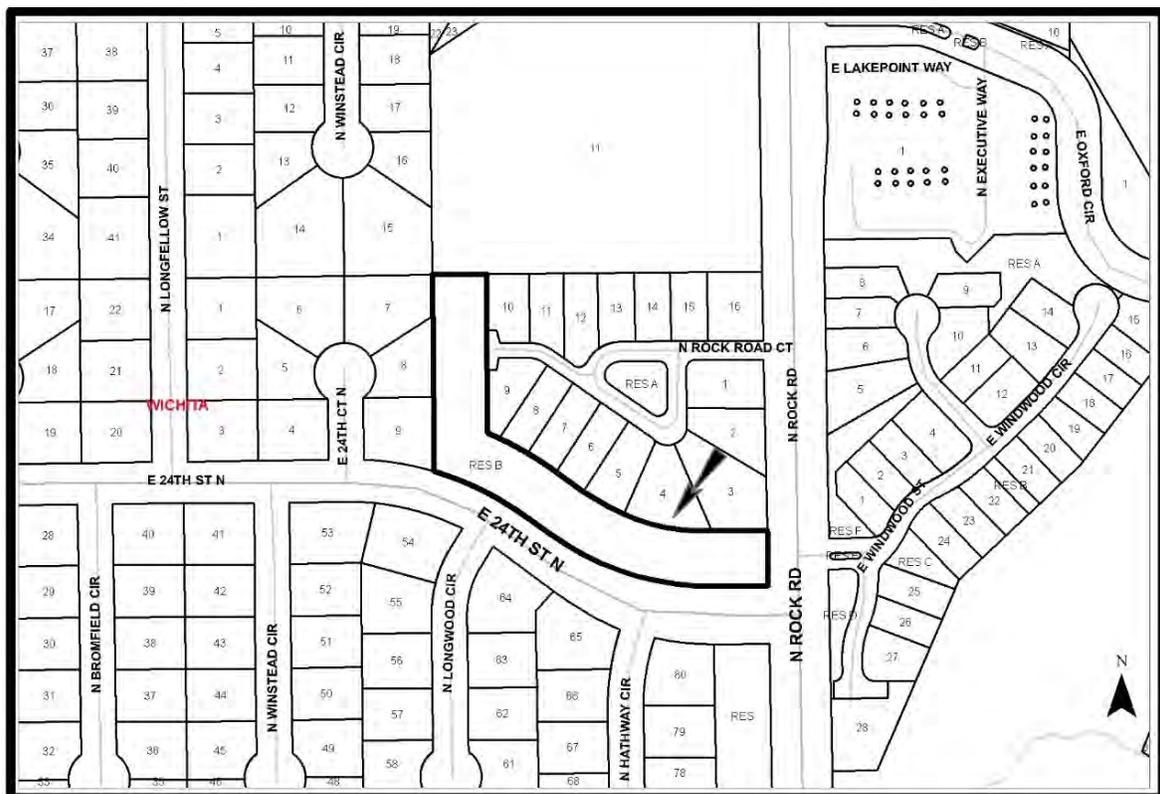
LEGAL DESCRIPTION: Generally described as vacating the plattor's text to amend the uses allowed in the platted Reserve B, Sycamore Village 4th Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located on the northwest side of 24th Street North and Rock Road (WCC II)

REASON FOR REQUEST: Install a sidewalk

CURRENT ZONING: The site and all abutting and adjacent properties are zoned SF-5 Single-Family Residential.

VICINITY MAP:



The applicant is requested the vacation of the plattor’s text to amend the uses allowed in the platted Reserve B, Sycamore Village 4th Addition. Reserve B runs parallel with a north portion of 24th Street North and between the side yards of the subject plat and the rear yards of three lots located in the west abutting Sycamore Village 3rd Addition. The plattor’s text states that Reserve B is to be used for utilities, drainage, landscaping and open space. There is no language in this statement that permits sidewalks. This is a subdivision and neighborhood without sidewalks. The plattor’s text further states that all reserves in the Sycamore Village 4th Addition are to be owned and maintained by the Homeowners Association (HOA). The HOA is the applicant for the vacation request and is aware that the HOA will own and maintain the sidewalks if the request is approved. There is a platted 10-foot wide utility easement, with sewer line located in it that is located in that portion of Reserve B that is located between the already noted lots that will remain in effect. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the described reserve. The Sycamore Village 4th Addition was recorded May 20, 1985.

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

- 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 September 8, 2016, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by vacating the plattor’s text to amend the uses allowed in a platted reserve and that the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate the plattor’s text to allow sidewalks in the platted Reserve B, Sycamore Village 4th Addition, while retaining that Reserve B will continue to be used for utilities, drainage, landscaping and open space.
- (2) Retain the language in the plattor’s text that states all reserves in the Sycamore Village 4th Addition are to be owned and maintained by the Homeowners Association and add that all sidewalks located in all reserves in the Sycamore Village 4th Addition shall be owned and maintained by the Homeowners Association.
- (3) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00036 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.

- (4) As needed provided Public Works, including Stormwater (and any other utility located within the subject reserve) with a private project plan for sidewalks located within the subject reserve for review and approval. The sidewalk(s) shall be constructed to City Standards and at the applicant’s expense. Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number to Planning prior to VAC2016-00036 proceeds to the City Council for final action.
- (5) All improvements shall be according to City Standards and at the applicants’ expense.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE’S RECOMMENDED ACTION

- (1) Vacate the plattor’s text to allow sidewalks in the platted Reserve B, Sycamore Village 4th Addition, while retaining that Reserve B will continue to be used for utilities, drainage, landscaping and open space.
- (2) Retain the language in the plattor’s text that states all reserves in the Sycamore Village 4th Addition are to be owned and maintained by the Homeowners Association and add that all sidewalks located in all reserves in the Sycamore Village 4th Addition shall be owned and maintained by the Homeowners Association.
- (3) As needed provide easements for public and franchised utilities. As needed provide letters/conformation from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00036 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (4) As needed provided Public Works, including Stormwater (and any other utility located within the subject reserve) with a private project plan for sidewalks located within the subject reserve for review and approval. The sidewalk(s) shall be constructed to City Standards and at the applicant’s expense. Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number to Planning prior to VAC2016-00036 proceeds to the City Council for final action.
- (5) All improvements shall be according to City Standards and at the applicants’ expense.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

STAFF REPORT

CASE NUMBER: VAC2016-00037 - Request to vacate a portion of platted front yard building setback

APPLICANT/AGENT: Rob and Sankita Richardson (owners/applicants) Hawthorne Home Improvements, c/o Michael Gatschet (agent)

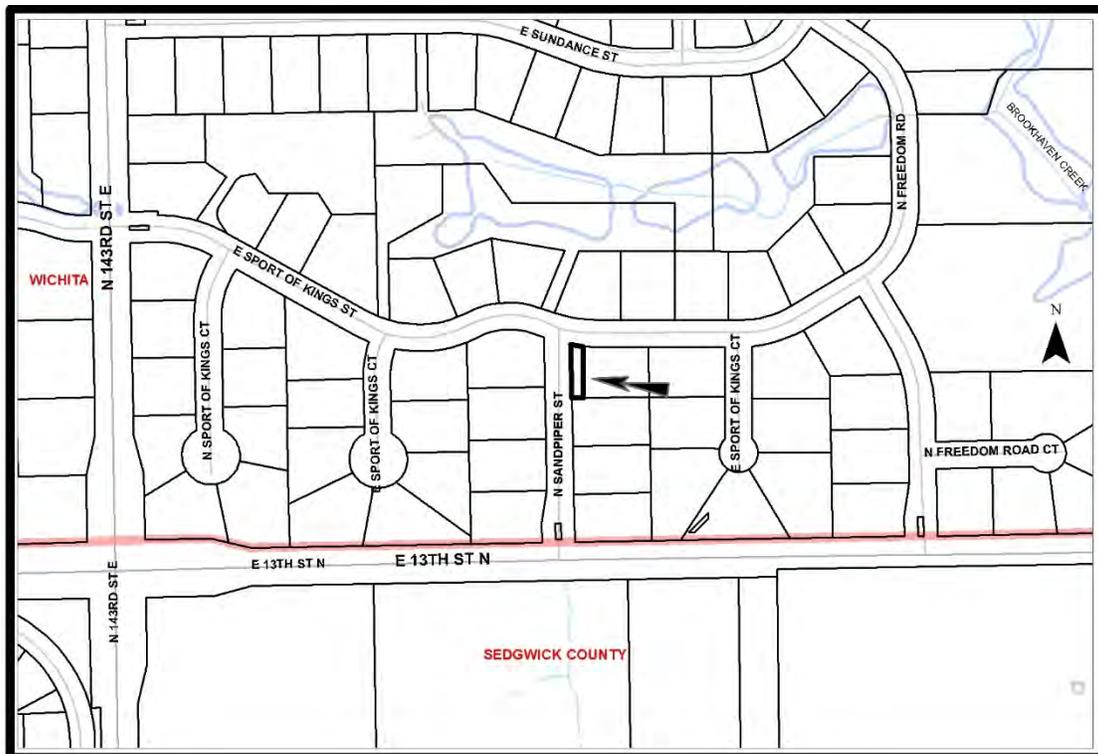
LEGAL DESCRIPTION: Generally described as vacating east 11 feet of the platted 30-foot front yard building setback located on and running parallel to the west lot/property line of Lot 4, Block 5, Savanna at Castle Rock Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located northeast of East 13th Street North and North 143rd Street East on the southeast corner of Sport of Kings and Sandpiper Streets (WCC #II)

REASON FOR REQUEST: Build onto garage

CURRENT ZONING: Site and all abutting and adjacent north, east and west properties are zoned SF-5 Single-Family Residential. Adjacent south property (across 13th Street North) is zoned SF-20 Single-Family Residential.

VICINITY MAP:



The applicants propose to vacate the east 11 feet of the platted 30-foot front yard building setback located on and running parallel to the west lot/property line of the SF-5 Single-Family Residential zoned corner lot, Lot 4, Block 5, Savanna at Castle Rock Addition. Per the Unified Zoning Code's (UZC) the shorter of the two street frontages of a corner lot is the front yard; the west side of the lot that has Sandpiper Street frontage is the front yard. The UZC minimum front yard setback standard for the SF-5 zoning district is 25 feet. There are no platted easements located in the subject front yard building setback. There are easements or utilities located in the subject front yard building setback. The applicants have provided an e-mail that purports to having approval by the Home Owners Association. The Savanna at Castle Rock Addition was recorded with the Register of Deeds January 7, 1994.

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

- 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 September 1, 2016, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by vacating the described portion of the platted front yard building setback and that the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate the east 11 feet of the of the platted 30-foot front yard setback located on and running parallel to the west lot/property line of the SF-5 Single-Family Residential zoned corner lot, Lot 4, Block 5, Savanna at Castle Rock Addition. Provide Planning Staff with a legal description of the approved vacated portion of the setback on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.
- (2) The applicants must provide a letter from the Home Owners Association, with signatures, that approves the proposed garage addition and the design and materials used for the garage addition. This letter must be provided to the Planner prior to VAC2016-00037 going City Council for final action.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide any needed easements prior to the case going to Council for final action.
- (4) All improvements shall be according to City Standards and at the applicant's expense.

- (5) Per MAPC Policy Statement #7, all conditions shall 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) Vacate the east 11 feet of the of the platted 30-foot front yard setback located on and running parallel to the west lot/property line of the SF-5 Single-Family Residential zoned corner lot, Lot 4, Block 5, Savanna at Castle Rock Addition. Provide Planning Staff with a legal description of the approved vacated portion of the setback on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to Council for final action.
- (2) The applicants must provide a letter from the Home Owners Association, with signatures, that approves the proposed garage addition and the design and materials used for the garage addition. This letter must be provided to the Planner prior to VAC2016-00037 going City Council for final action.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide any needed easements prior to the case going to Council for final action.
- (4) All improvements shall be according to City Standards and at the applicant’s expense.
- (5) Per MAPC Policy Statement #7, all conditions shall 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.

STAFF REPORT

MAPC September 29, 2016

DAB V September 6, 2016

CASE NUMBER: ZON2016-37 and CUP2016-28

APPLICANT/AGENT: DMD, LLC (Marlin Penner)/Baughman Company (Russ Ewy)

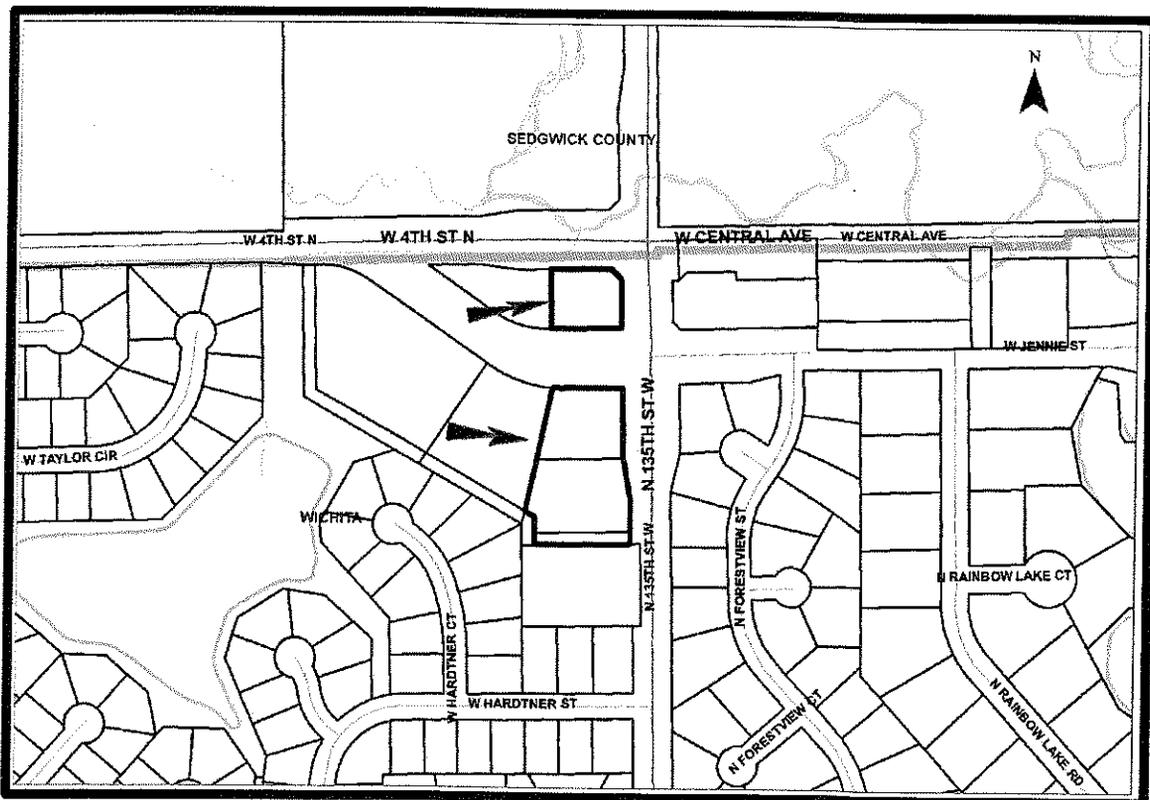
REQUEST: City zone change from SF-5 Single-Family Residential and GO General Office to LC Limited Commercial and amendment to allow limited commercial development of Parcels 2, 3 and 4

CURRENT ZONING: SF-5 Single-Family Residential and GO General Office

SITE SIZE: 2.5 acres

LOCATION: South of West Central Avenue and West of North 135th Street West

PROPOSED USE: Limited Commercial Development



BACKGROUND: The subject site is located at the southwest corner of West Central and North 135th Street West and contains 2.5 acres that is zoned SF-5 Single-Family Residential and GO General Office subject to the development standards and general provisions contained in the Highland Springs Community Unit Plan (CUP) DP-233. Currently CUP DP-233 is a six-parcel CUP that currently permits the following uses: Parcel 1 – LC; Parcel 2 – GO; Parcel 3 – GO; Parcel 4 –SF-5; Parcel 5 – LC; and Parcel 6 – LC.

In addition to a zone change to LC on Parcels 2, 3, and 4, the applicant is proposing the attached CUP that contains the following amendments to CUP DP-233:

- 1) General Provision 6 is proposed to read: “Approval of Amendment #1 shall be contingent upon the replatting of the Highland Springs Commercial Addition, which shall address the realigned street Right-of-way, parcel layout, elimination of a portion of Reserve A, and any other alteration created by the plat. The applicant shall provide four copies of an updated CUP following the replat. Guarantees for left turn center lanes and right turn decal lanes to all full movement approaches, ant other specific street improvements for 135th St W. and Central Ave., shall be further reviewed and determined at the time of platting.”
- 2) General Provision 7(B) is proposed to read: “Flashing, rotating or moving signs, signs with moving lights or signs which create illusions of movement are not permitted.”
- 3) General Provision 7(C) is amended to prohibit LED signs.
- 4) General Provision 7(F) is proposed to read: “Signs shall be limited to one monument type per frontage for Parcel 3 and 4, no taller than 8 feet in height, and be limited to 48 square feet in area. Parcels 1, 2, 5, and 6 shall each be limited to a monument type sign no tall that 12 feet in height and a maximum of 60 square feet of signage. No signage shall be permitted in Reserve A, B, and C.
- 5) General Provision 16 is amended to include screening of loading docks and screening materials are to be similar to the building materials.
- 6) General Provision 17 is proposed to change the last sentence to: “The building in Parcel 4 shall appear residential in character.”
- 7) General Provision 19 is proposed to read: “All parcels shall be zoned Limited Commercial. No parcel within this CUP shall allow the use of adult entertainment establishments, group residences, halfway houses, correctional placement residences, private clubs, taverns, drinking establishments, sexually oriented businesses and night club. Restaurants that serve liquor can be developed and may serve liquor, as long as food is the primary service of the establishment. Restaurants with drive-through windows, convenience stores, service stations, and vehicle repair (limited) are not permitted with 200 feet of residential uses. Drive-

through lanes shall be designed to ensure queuing lanes will not align vehicle headlights in a manner that faces residential uses. No overhead doors shall be permitted within 200 feet of residential uses and shall not face any residential zoning district. Exterior audio systems that project sound beyond the boundaries of the CUP are prohibited.”

8) Replat of “Reserve A.”

The property has an existing screening wall along the southwest property lines of Parcels 5 and 6 that screen the existing LC zoning from adjacent residential uses. There are wood screening fences along the west and south property lines of Parcel 4 abutting and adjacent residential uses. The replat of the Highland Springs CUP (see attached CUP concept) proposes 35-foot building setbacks along the frontages of West Central and North 135th Street West and 30-foot setbacks for Reserve A, B and C along the southwest property lines of Parcels 4, 5 and 6.

Land to the north (across West Central) of the application area is zoned SF-20 Single-family Residential and is undeveloped. Properties located to the west, south and east of the subject site are zoned SF-5 and developed with single-family residences. Property east of the site, at the southeast corner of West Central and North 135th Street West, is zoned NO Neighborhood Office and is partially developed.

CASE HISTORY: The Highland Springs CUP was established in September 1999. This is the first Amendment and first zone change.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|-------------|--|
| North: | SF-5 | County, Single-family residential |
| South: | SF-5 | Single-family residential |
| East: | NO and SF-5 | Partially developed Neighborhood Office; Single-family residential |
| West: | SF-5 | Single-family residences, Highland Springs 2 nd & 3 rd Additions |

PUBLIC SERVICES: The site is served by municipal services. West Central and 135th Street West is a paved five-lane arterial intersection with dedicated turn lanes. West of the intersection the lanes reduce to two-lane paved street; north of the intersection reduces to two-lane paved street; east of the intersection remains four lanes with dedicated turn access; south of the intersection reduces to three paved lanes with turn access. The proposed CUP amendment provides for controlled access along West Central and North 135th Street West

CONFORMANCE TO PLANS/POLICIES: The 2035 Wichita Future Growth Concept Map indicates the site is appropriate for “new employment growth” uses. The “new employment growth” category encompasses areas that are likely to be redeveloped by 2035 with uses that constitute centers or concentration of employment primarily in manufacturing warehousing, distribution, construction, research, technology, business

services or corporate offices. In certain areas, especially those in proximity to existing residential uses, convenience retail centers likely will be developed.

RECOMMENDATION: Based upon the information available at the time the report was prepared, staff recommends approval of the zone change and amendments to CUP DP233 subject to the development guidelines the amended CUP and the following conditions:

- A. The applicant shall record a document with the Register of Deeds indicating that this tract (referenced as CUP DP-233) has been replatted and includes special conditions for development on this property.
- B. Unless specifically modified, the development shall comply with all applicable ordinances, regulations or codes, including but not limited to zoning, fire, building and sanitation.
- C. The applicant shall submit four final copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

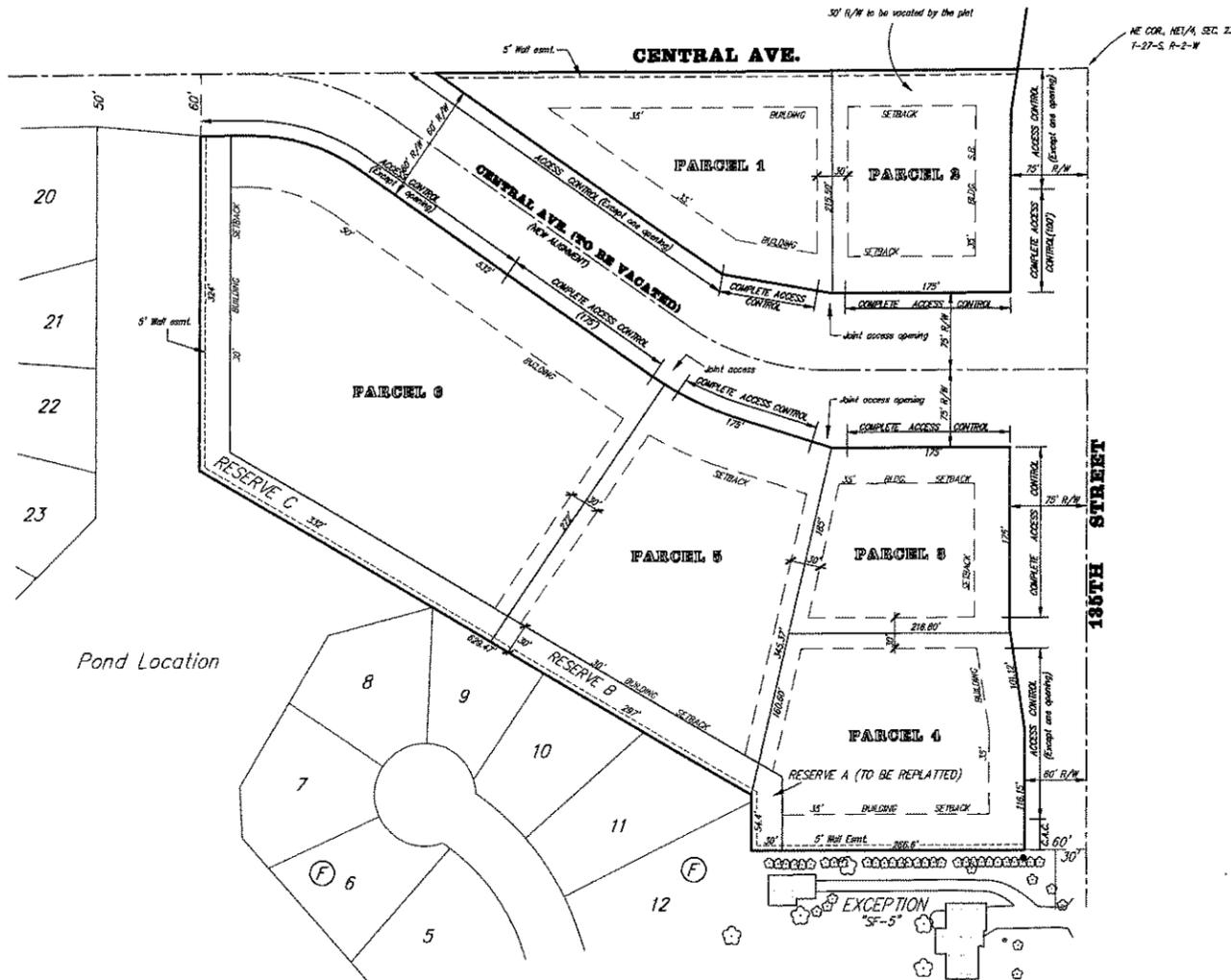
1. The zoning, uses and character of the neighborhood: Land to the north (across West Central) of the application area is zoned SF-20 Single-family Residential and is undeveloped. Properties located to the west, south and east of the subject site are zoned SF-5 and developed with single-family residences. Property east of the site, at the southeast corner of West Central and North 135th Street West, is zoned NO Neighborhood Office and is partially developed.
2. The suitability of the subject property for the uses to which it has been restricted: The Highland Springs Commercial CUP DP-233 and its LC, GO and SF-5 zoning was established in September of 1999. The site could continue to be economically viable as currently zoned; however, the proposed zone changes and CUP amendment address existing market trends.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The zoning for the site was approved in 1999 and has been undeveloped since that time. The proposed zone change and CUP amendments address existing tenant needs. The requested changes should not detrimentally impact nearby property owners to any greater extent than the existing development.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request represents a gain to the public in that it contributes to the area's long term economic opportunity. Denial would presumably represent a loss in economic opportunity. The arterial intersection has been improved to accommodate the proposed uses.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2035 Wichita Future Growth Concept Map indicates the site is appropriate for “new employment growth” uses. The “new employment growth” category encompasses areas that are likely to be redeveloped by 2035 with uses that constitute centers or concentration of employment primarily in manufacturing warehousing, distribution, construction, research, technology, business services or corporate offices. In certain areas, especially those in proximity to existing residential uses, convenience retail centers likely will be developed.
6. Impact of the proposed development on community facilities: Existing or proposed improvements are in place to address anticipated demands.

HIGHLAND SPRINGS COMMUNITY UNIT PLAN DP - 233

GENERAL PROVISIONS:

- Total Land Area: 367,371 sq.ft. or 8.39 acres
A. Net Land Area (Not including Reserves): 349,944 sq.ft. or 8.03 acres
- Total Gross Floor Area: 122,480 sq.ft.
Total Floor Area Ratio: 35 Percent
- Parking shall be provided in accordance with Section 28.04.140 et seq. of the Code of the City of Wichita, unless otherwise specified in the parcel description.
- Setbacks are as indicated on the C.U.P. drawing, or as specified in the parcel descriptions. If contiguous parcels are to be developed under the same ownership, setbacks between those parcels will not be required.
- A Drainage Plan shall be submitted to City Engineering for approval. Required guarantees for drainage shall be provided at the time of platting improvements.
- Approval of Amendment #1 shall be contingent upon the replatting of the Highland Springs Commercial Addition, which shall address the realigned street right-of-way, parcel layout, elimination of a portion of Reserve A, and any other alteration created by the plat. The applicant shall provide four copies of an updated C.U.P. following the replat.
- Signs shall be in accordance with the Sign Code of the City of Wichita with the following conditions:
 - As the frontage develops along the arterial roadways, monument type signs shall be spaced a minimum of 150' apart, irrespective of how land is leased or sold.
 - Flashing signs (except for signs showing only time, temperature and other public service messages), rotating or moving signs, signs with moving lights or signs which create illusions of movement are not permitted.
 - Portable, LED, and off-site signs are not permitted.
 - Window display signs are limited to 25% of the window area.
 - No signs shall be allowed on the rear of any buildings.
 - Signs shall be limited to one monument type sign per frontage for Parcel 3 and 4, no taller than 8 feet in height, and be limited to 48 square feet in area. Parcels 1, 2, 3, and 6 shall each be limited to a monument type sign no taller than 12 feet in height and a maximum of 60 square feet of signages. No signages shall be permitted in Reserve A, B, and C.
- Access Controls shall be as shown on the final plat.
- A temporary easement for Central Avenue will be provided until the improvements to the new alignment of Central are completed.
- All exterior lighting shall be shielded to direct light disbursement in a downward direction.
- All parcels shall share similar or consistent parking lot lighting elements (i.e., fixtures, poles, and lamps, and etc.).
 - Limited height of light poles to 14 feet within 100 feet of abutting residential-zoned property, and 20 feet on the remainder of the tract.
 - Extensive use of backlit canopies and neon or fluorescent tube lighting on buildings is not permitted.
- Utilities shall be installed underground on all parcels.
- Landscaping for this site shall be required as follows:
 - Requirements for streetyard landscaping and buffer strip trees will be calculated at 1.5 times the minimum ordinance requirements. Requirements for parking lot landscape shall comply with the landscape ordinance.
 - A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material. This plan shall be submitted to the Planning Department for their review and approval prior to issuance of a building permit.
 - A financial guarantee for the plant material approved on the landscape plan for that portion of the C.U.P. being developed shall be required prior to issuance of any occupancy permit, if the required landscape has not been planted.
- Screening Walls:
 - A six (6) foot high concrete wall shall be constructed along property lines of the C.U.P. where adjacent to residential zoning (See Drawing).
 - This solid concrete wall shall be constructed of a pattern and color that is consistent with the building walls.
- Roof-top mechanical equipment shall be screened from ground level view per Unified Zoning Code.
- Trash receptacles shall be appropriately screened to reasonably hide them from ground view.
- All buildings in the C.U.P. shall share uniform architectural character, color, texture, and the same predominate exterior building material. Building walls and roofs must have predominantly earth-tone colors, with vivid colors limited to incidental accents, and must employ materials similar to surrounding residential areas. The building in Parcel 4 shall appear residential in character.
- Fire lanes shall be in accordance with the Fire Code of the City of Wichita. No parking shall be allowed in said fire lanes, although they may be used for passenger loading and unloading. The Fire Chief or his designated representative shall review and approve the location and design of all fire lanes. Fire hydrant installation and paved access to all building sites shall be provided for each phase of construction prior to the issuance of building permits.
- All parcels shall be zoned Limited Commercial. No parcel within this C.U.P. shall allow the use of adult entertainment establishments, group homes, group residential, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor can be developed and may serve liquor, as long as food is the primary service of the establishment.
- The transfer of title of all or any portion of land included within the Community Unit Plan (or any amendments thereto) does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon present owners, their successors and assigns.
- No single use shall occupy more than 8,000 square feet of floor area, with the exception of a grocery store, drug store, or furniture store.
- Amendments, adjustments or interpretations to this C.U.P. shall be done in accordance with Article V, Section E, 13-15 of the Unified Zoning Code.
- The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
- Any major changes in this development plan shall proceed in be submitted to the Planning Commission and to the Governing Body for their consideration.



PARCEL 1

- A. Net Area: 50,061 sq.ft. or 1.15 acres
- B. Maximum Building Coverage: 15,019 sq.ft. or 30 percent
- C. Maximum Gross Floor Area: 17,521 sq.ft.
- D. Floor Area Ratio: 35 percent
- E. Maximum Number of Buildings: One (1)
- F. Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- G. Setbacks: See Drawing for Setbacks
- H. Access Points: See Drawing
- I. Zoning: "LC" Limited Commercial

PARCEL 3

- A. Net Area: 35,225 sq.ft. or .81 acres
- B. Maximum Building Coverage: 10,568 sq.ft. or 30 percent
- C. Maximum Gross Floor Area: 12,329 sq.ft.
- D. Floor Area Ratio: 35 percent
- E. Maximum Number of Buildings: One (1)
- F. Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- G. Setbacks: See Drawing for Setbacks
- H. Access Points: See Drawing
- I. Zoning: "LC" Limited Commercial

PARCEL 5

- A. Net Area: 74,027 sq.ft. or 1.69 acres
- B. Maximum Building Coverage: 22,208 sq.ft. or 30 percent
- C. Maximum Gross Floor Area: 25,909 sq.ft.
- D. Floor Area Ratio: 35 percent
- E. Maximum Number of Buildings: 2 (Two)
- F. Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- G. Setbacks: See Drawing for Setbacks
- H. Access Points: See Drawing
- I. Zoning: "LC" Limited Commercial

RESERVES A, B, & C

Uses: Landscaping, irrigation, walls, and utilities confined by easement.

| | |
|-----------|--------------------------------|
| Reserve A | 8,718 sq.ft. or 0.20 acres |
| Reserve B | 9,384 sq.ft. or 0.22 acres |
| Reserve C | 19,189 sq.ft. or 0.44 acres |

LEGAL DESCRIPTION:

Highland Springs Commercial Addition, Wichita, Sedgwick County, Kansas

PARCEL 2

- A. Net Area: 38,086 sq.ft. or .87 acres
- B. Maximum Building Coverage: 11,420 sq.ft. or 30 percent
- C. Maximum Gross Floor Area: 13,323 sq.ft.
- D. Floor Area Ratio: 35 percent
- E. Maximum Number of Buildings: One (1)
- F. Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- G. Setbacks: See Drawing for Setbacks
- H. Access Points: See Drawing
- I. Zoning: "LC" Limited Commercial

PARCEL 4

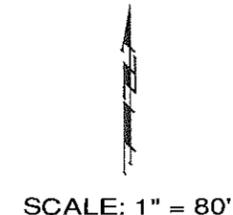
- A. Net Area: 52,798 sq.ft. or 1.24 acres
- B. Maximum Building Coverage: 15,839 sq.ft. or 30 percent
- C. Maximum Gross Floor Area: 18,479 sq.ft.
- D. Floor Area Ratio: 35 percent
- E. Maximum Number of Buildings: One (1)
- F. Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- G. Setbacks: See Drawing for Setbacks
- H. Access Points: See Drawing
- I. Zoning: "LC" Limited Commercial

PARCEL 6

- A. Net Area: 117,867 sq.ft. or 2.71 acres
- B. Maximum Building Coverage: 35,360 sq.ft. or 30 percent
- C. Maximum Gross Floor Area: 41,253 sq.ft.
- D. Floor Area Ratio: 35 percent
- E. Maximum Number of Buildings: 2 (Two)
- F. Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- G. Setbacks: See Drawing for Setbacks
- H. Access Points: See Drawing
- I. Zoning: "LC" Limited Commercial

REVISIONS:

REVISED PER JOURNAL ENTRY: SEPTEMBER 24, 1989
REVISED PER AMENDMENT #1: JULY 11, 2016



DP-233
HIGHLAND SPRINGS
COMMUNITY UNIT PLAN

BAUGHMAN COMPANY P.A.
ENGINEERING, SURVEYING, & PLANNING
316-269-7271 • 316 ELLIS • WICHITA, KANSAS 67211

STAFF REPORT
MAPC September 29, 2016
DAB IV September 12, 2016

CASE NUMBER: CUP2016-00024

APPLICANT/AGENT: Kellogg and West LLC c/o Christian Ablah (owner/applicant), Kim Edgington (agent)

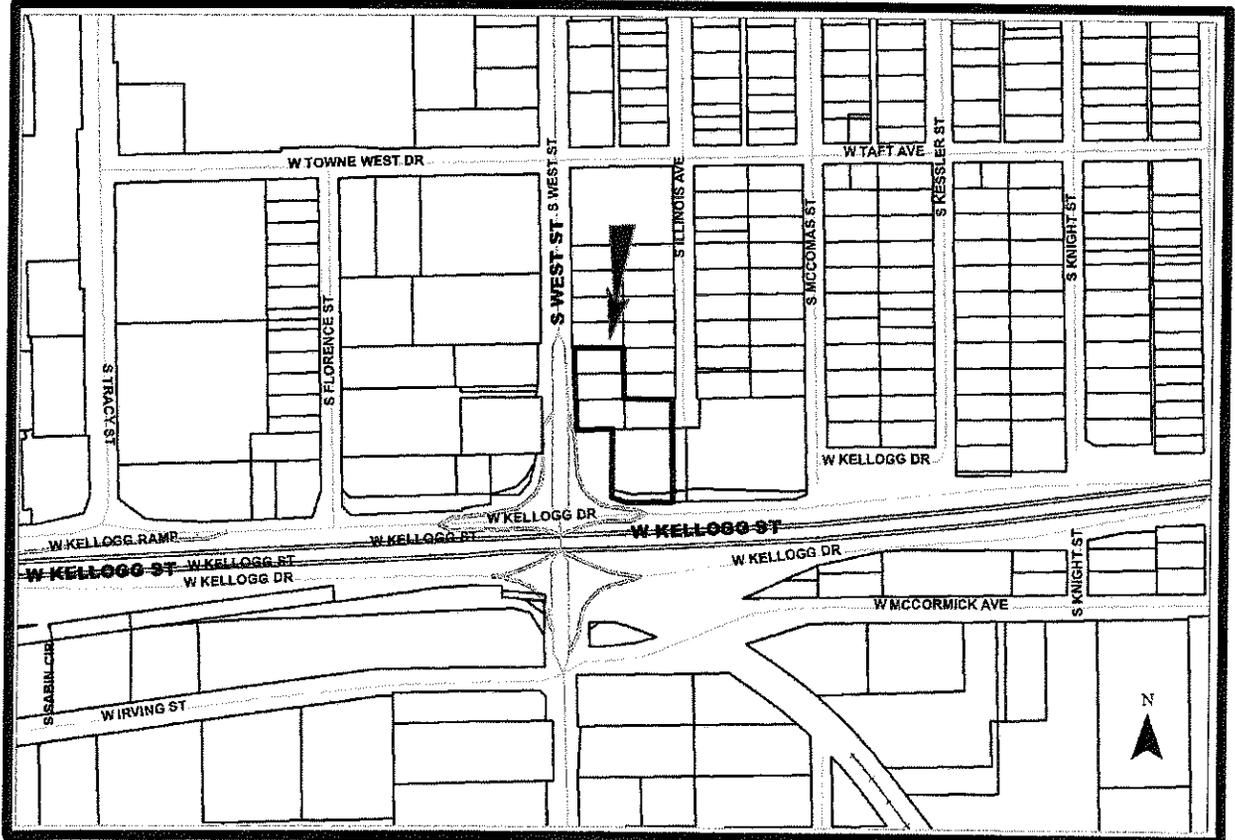
REQUEST: Amendment #1 of DP-332 Eureka Gardens Commercial Community Unit Plan (CUP)

CURRENT ZONING: LI Limited Industrial (“LI”)

SITE SIZE: 1.84 acres

LOCATION: Generally located north of Kellogg Drive and east of West Street

PROPOSED USE: Commercial re-development



BACKGROUND: The applicant requests an amendment of the Eureka Gardens Commercial Community Unit Plan (“CUP”) DP-332 on property located north of Kellogg Drive and east of West Street. The requested amendment expands the CUP from a one parcel, 1.1 acre CUP to a two parcel, 1.84-acre CUP. The additional parcel is located north and west of the existing parcel. Both parcels are zoned LI Limited Industrial. The existing parcel is developed with a building formerly used as a restaurant. The additional parcel is being developed with a retail building.

Parcel 1 is currently permitted one pole sign at the southwest corner of the parcel up to 65 feet tall with a total of 400 square feet signage, limiting any one sign on the pole to 300 square feet. The applicant requests an increase in overall signage allowed on the pole to 500 square feet, keeping the 65-foot height limitation and 300 square-foot limitation for a single sign. The applicant requests one pole sign for Parcel 2 up to 30 feet tall with a total of 190 square of signage. The Wichita-Sedgwick County Unified Zoning Code (“UZC”) does not require a CUP for this site, as the site is less than six (6) acres in size and is not zoned GC General Commercial (“GC”) or LC Limited Commercial (“LC”). The UZC states that a CUP is intended to provide well planned and organized commercial development to certain standards and provisions prescribed by the UZC to include ingress and egress, parking, drainage, facilities and sign controls. The Wichita Sign Code allows alternative or additional requirements concerning sign type, size, height and location on sites subject to CUP regulations. Common practice with CUPs is to consolidate signage, allowing individual signs increased height and size, but limiting the total number of signs on the site.

Properties north of this site and across West Street to the west of the site are zoned LI and developed with retail, automobile service, and restaurant uses. South of the site is the Kellogg Expressway, further south is property zoned LI and developed with warehousing and automobile service uses. East of the site is LC zoning with a hotel fronting Kellogg and automobile service and residences fronting Illinois Avenue. Several pole signs along the elevated portion of the Kellogg Expressway have been allowed additional height for visibility prior to the West Street exit. Several off-site billboards also exist at the Kellogg and West intersection.

CASE HISTORY: The site is located on portions of the Parkway Addition, recorded in 1954, and the Eureka Gardens Addition, recorded in 1941. A sign variance (BZA55-88) was granted in 1988 to permit a 45-foot tall pole sign. DP-332 Eureka Gardens Commercial CUP was approved in 2013.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|----|--|
| NORTH: | LI | Retail, automobile service, restaurant |
| SOUTH: | LI | Warehousing, automobile service |
| EAST: | LC | Hotel, automobile service, single-family residential |
| WEST: | LI | Retail, automobile service, restaurant |

PUBLIC SERVICES: Kellogg is an elevated highway at this location. West Street is a section line arterial street at this location. The Kellogg and West Street interchange is currently being reconstructed.

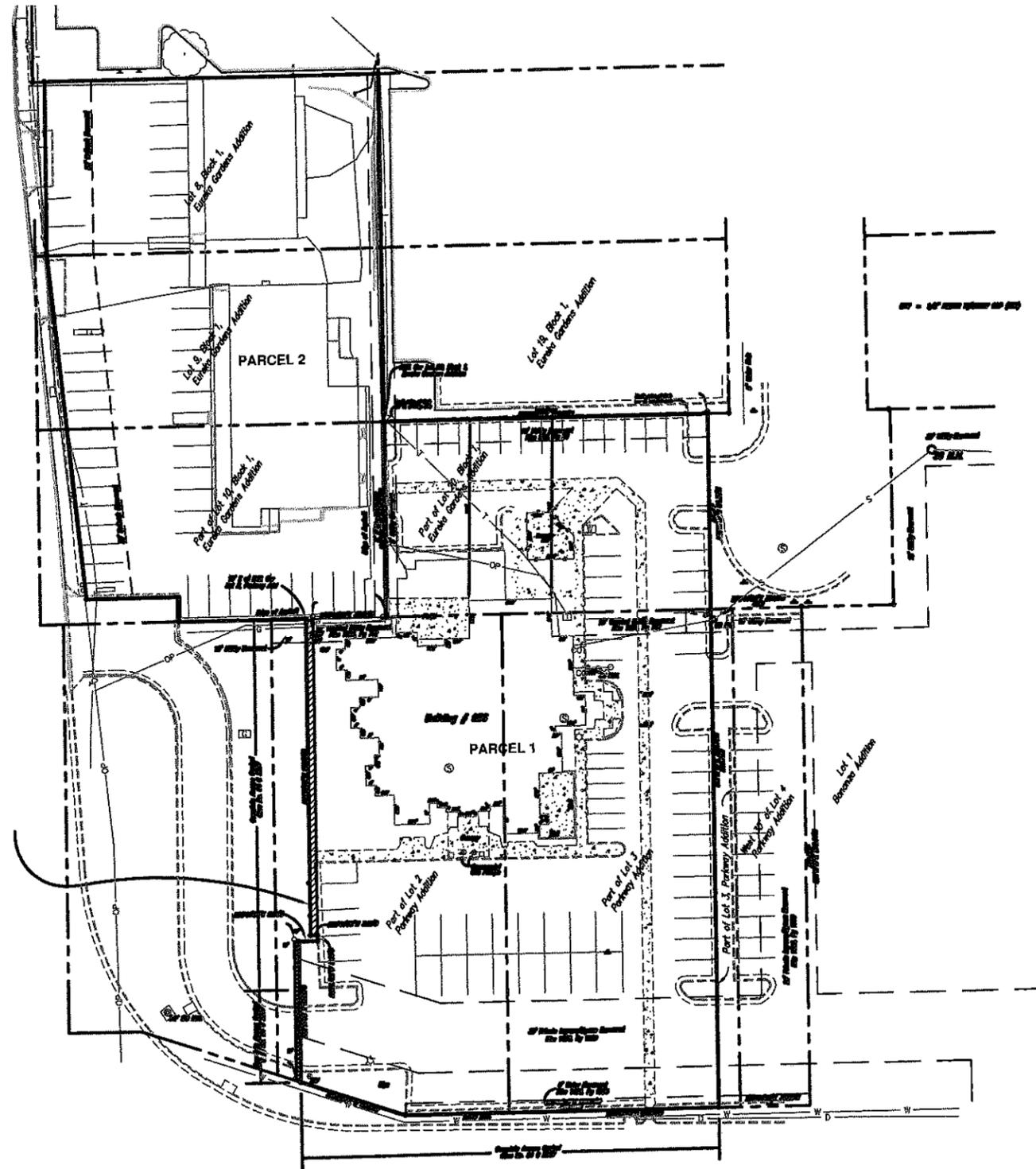
CONFORMANCE TO PLANS/POLICIES: The adopted 2035 Wichita Future Growth Concept Map of the Wichita-Sedgwick County Comprehensive Plan, the Community Investments Plan, identifies the subject property as “commercial.” The “commercial” category encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality.

RECOMMENDATION: Staff notes that this site could be developed with a variety of high intensity uses under the current LI zoning. The applicant is requesting to limit permitted uses to those in the GC zoning district and to use the CUP to consolidate signage, parking, landscaping and other development features. The requested signage is taller and larger than would be permitted by the sign code but is not excessive given the elevated Kellogg Expressway proximity and visibility need from exits. Based upon information available prior to the public hearings, planning staff recommends that the proposed CUP be APPROVED, subject to the following conditions:

- A. General Provision #10 shall be added stating “Cross lot access shall be provided between Parcels 1 and 2 and between Parcel 1 and the property to the east as recorded in the cross lot access agreement in Film 1450, Page 1990. A pedestrian circulation plan shall be approved by the Planning Director prior to the issuance of building or occupancy permits that provides connections from building entrances to sidewalks on abutting streets.”
- B. The applicant shall record a CUP certificate with the Register of Deeds indicating that this tract (referenced as DP-332 Eureka Gardens Commercial CUP) has special conditions for development on the property. A copy of the recorded certificate along with four copies of the approved CUP shall be submitted to the Metropolitan Area Planning Department within 60 days after approval of this case by the MAPC or Governing Body, as applicable, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Properties north of this site and across West Street to the west of the site are zoned LI and developed with retail, automobile service, and restaurant uses. South of the site is the Kellogg Expressway, further south is property zoned LI and developed with warehousing and automobile service uses. East of the site is LC zoning with a hotel fronting Kellogg and automobile service and residences fronting Illinois Ave.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned LI and could be developed with a variety of uses. The proposed CUP would limit uses on the site to those permitted in the GC zoning district, the proposed CUP provides additional development standards.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested signage is taller and larger than would be permitted by the sign code but is not excessive given the elevated Kellogg Expressway proximity and visibility need from exits. The proposed CUP establishes other restrictions making development of this site more compatible with surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted 2035 Wichita Future Growth Concept Map of the Wichita-Sedgwick County Comprehensive Plan, the Community Investments Plan, identifies the subject property as “commercial.” The “commercial” category encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality.
5. Impact of the proposed development on community facilities: The proposed CUP will not impact community facilities beyond what is currently permitted on the site.



LEGAL DESCRIPTION:

Beginning at the N.W. Corner of Lot 20, Block 1, Eureka Gardens to Sedgwick County, Kansas (now in the City of Wichita); thence east, 140.72 feet, along the north line of said Lot 20; thence south, 299.7 feet more or less, parallel with the east line of said Lot 20 to the south line of Lot 3, Parkway Addition to Wichita, Kansas; thence west, 135.72 feet, along the south line of Lot 2 and 3 of said Parkway Addition; thence northwest, 49.6 feet, along the south line of said Lot 2; thence north 60.2 feet, along a line 8 feet east and parallel with the west line of said Lot 2; thence east, 10 feet, along a line parallel with the north line of said Lot 2; thence north 139.8 feet, along a line 18 feet east of and parallel with the west line of said Lot 2 to the north line of said Lot 2; thence east, 32 feet, along the north line of said Lot 2 to the S.W. Corner of Lot 20, Block 1, of said Eureka Gardens; thence north 84.3 feet more or less, along the west line of said Lot 20 to the beginning, except therefrom that part lying within the west 10 feet of Lot 2.

AND
The east 3 feet of the west 18 feet of the north 136.53 feet, Lot 2, Parkway Addition, Wichita, Sedgwick County, Kansas.

AND
Lot 8, except the west 5 feet for Highway C.C. 84C-2867, Block 1, Eureka Gardens to Sedgwick County, Kansas.

AND
Lot 9, except that part taken for Highway C.C. 84C-2867, Block 1, Eureka Gardens to Sedgwick County, Kansas.

AND
Lot 10, except that part taken for Highway C.C. 84C-2867, Block 1, Eureka Gardens to Sedgwick County, Kansas.

GENERAL:

TOTAL GROSS AREA = 1.84 ACRES±
TOTAL NET AREA = 1.84 ACRES±

THIS DEVELOPMENT IS PROPOSED TO CONTAIN 1.84 NET ACRES ± OF "LI" ZONING.

IF DEVELOPED TO THE MAXIMUM PERMITTED, THIS DEVELOPMENT WOULD CONTAIN THE FOLLOWING:

GENERAL COMMERCIAL USES - 81,983 SQUARE FEET

GENERAL PROVISIONS

1. ACCESS CONTROL: COMPLETE ACCESS CONTROL TO KELLOGG. ACCESS TO WEST STREET SHALL BE LIMITED TO TWO OPENINGS. ACCESS TO ILLINOIS AVENUE SHALL BE LIMITED TO ONE OPENING.
2. ALL UTILITIES SHALL BE INSTALLED UNDERGROUND.
3. DRAINAGE: DRAINAGE SHALL BE IN ACCORDANCE WITH DRAINAGE PLANS APPROVED BY THE ENGINEERING DIVISION OF THE CITY OF WICHITA.
4. BUILDING SETBACKS:
PARCEL 1: MINIMUM BUILDING SETBACKS SHALL BE 35 FEET ALONG THE EXISTING PROPERTY LINE FOR KELLOGG AND A 15 FOOT SIDE YARD SETBACK ALONG THE EXISTING PROPERTY LINE FOR WEST STREET.
PARCEL 2: MINIMUM BUILDING SETBACK SHALL BE 20 FEET ALONG WEST STREET.

IF SETBACKS ARE NOT SHOWN, UNDERLYING ZONING DISTRICT REGULATIONS SHALL APPLY.
5. PARKING RATIO SHALL BE IN ACCORDANCE WITH THE APPROPRIATE CODE OF THE CITY OF WICHITA.
6. SIGNAGE:
TWO POLE SIGNS SHALL BE ALLOWED.

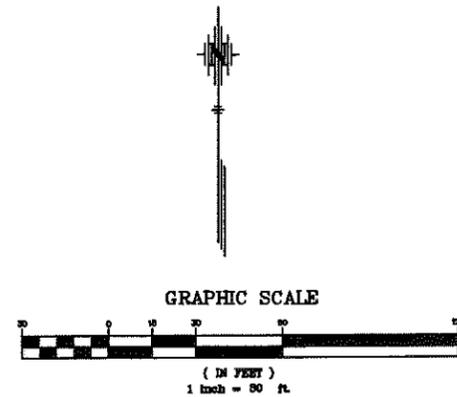
ONE POLE SIGN SHALL BE LOCATED AT OR NEAR THE SOUTHWEST CORNER OF PARCEL 1. THIS SIGN SHALL BE ALLOWED TO BE A MAXIMUM OF 65 FEET IN HEIGHT. THIS POLE SIGN SHALL BE ALLOWED UP TO 500 SQUARE FEET OF SIGNAGE WITH NO SINGLE SIGN, IF MULTIPLE PANELS, GREATER THAN 300 SQUARE FEET. SIGN PANELS MAY BE LOCATED AT ANY HEIGHT UP TO 65 FEET.

ONE POLE SIGN SHALL BE ALLOWED ALONG THE WEST STREET FRONTAGE OF PARCEL 2. THIS SIGN SHALL BE ALLOWED TO BE A MAXIMUM OF 30 FEET IN HEIGHT. THIS POLE SIGN SHALL BE ALLOWED UP TO 190 SQUARE FEET OF SIGNAGE.
7. PRIOR TO FINAL APPROVAL OF THE PARKING PLAN, THE FIRE CHIEF, OR HIS DESIGNATED REPRESENTATIVE, SHALL APPROVE THE PLAN AS TO THE LOCATION AND DESIGN OF ANY REQUIRED FIRE LANE(S).
8. SCREENING AND LANDSCAPING: SHALL BE PER THE UNIFIED ZONING CODE AND THE CITY OF WICHITA LANDSCAPE ORDINANCE.

A BUILDING PERMIT SHALL BE OBTAINED PRIOR TO CONSTRUCTION OF ANY WALL. NO WALL SHALL BE CONSTRUCTED IN ANY UTILITY EASEMENT.

TRASH RECEPTACLES, LOADING DOCKS, AND GROUND LEVEL MECHANICAL EQUIPMENT SHALL BE APPROPRIATELY SCREENED TO REASONABLY HIDE THEM FROM GROUND VIEW.
9. A LANDSCAPE PLAN, PREPARED BY A REGISTERED LANDSCAPE ARCHITECT, FOR THE REQUIRED PLANTING STRIPS, INDICATING THE TYPE, LOCATION, AND SPECIFICATION OF PLANT MATERIALS, AND METHOD OF PROVIDING WATER, SHALL BE SUBMITTED TO THE PLANNING DEPARTMENT FOR THEIR REVIEW AND APPROVAL PRIOR TO THE ISSUANCE OF BUILDING PERMIT(S).

A FINANCIAL GUARANTEE FOR THE PLANT MATERIALS APPROVED IN THE LANDSCAPE PLANS SHALL BE REQUIRED PRIOR TO THE ISSUANCE OF ANY OCCUPANCY PERMIT IF THE REQUIRED LANDSCAPING HAS NOT BEEN PLANTED.



PARCEL DESCRIPTION:

PARCEL ONE

PROPOSED USES - ALL PERMITTED USES BY RIGHT IN THE "CC" ZONING DISTRICT
NET AREA - 1.1± ACRES, OR 49,722 ± SQUARE FEET
MAXIMUM BUILDING COVERAGE - 30% OR 14,917 ± SQUARE FEET
FLOOR AREA RATIO - 0.40
MAXIMUM GROSS FLOOR AREA - 19,889 ± SQUARE FEET
MAXIMUM BUILDING HEIGHT - 35 FEET

PARCEL TWO

PROPOSED USES - ALL PERMITTED USES BY RIGHT IN THE "CC" ZONING DISTRICT
NET AREA - 0.74± ACRES, OR 32,261 ± SQUARE FEET
MAXIMUM BUILDING COVERAGE - 30% OR 9,678 ± SQUARE FEET
FLOOR AREA RATIO - 0.40
MAXIMUM GROSS FLOOR AREA - 12,904 ± SQUARE FEET
MAXIMUM BUILDING HEIGHT - 35 FEET

EUREKA GARDENS

COMMUNITY UNIT PLAN
DP-332



KAW VALLEY ENGINEERING, INC.
200 N. EMPORIA, SUITE 100
WICHITA, KANSAS 67202
PH. (316) 440-4304 | FAX (316) 440-4309
wh@kvang.com | www.kvang.com

DATE OF PREPARATION: APRIL 21, 2016 PROJECT NO. G15D0170 SHEET 1 OF 1

STAFF REPORT

DAB I October 3, 2016
 MAPC September 29, 2016

CASE NUMBER: CON2016-00042

APPLICANT/AGENT: Jennifer Ethridge (owner/applicant)

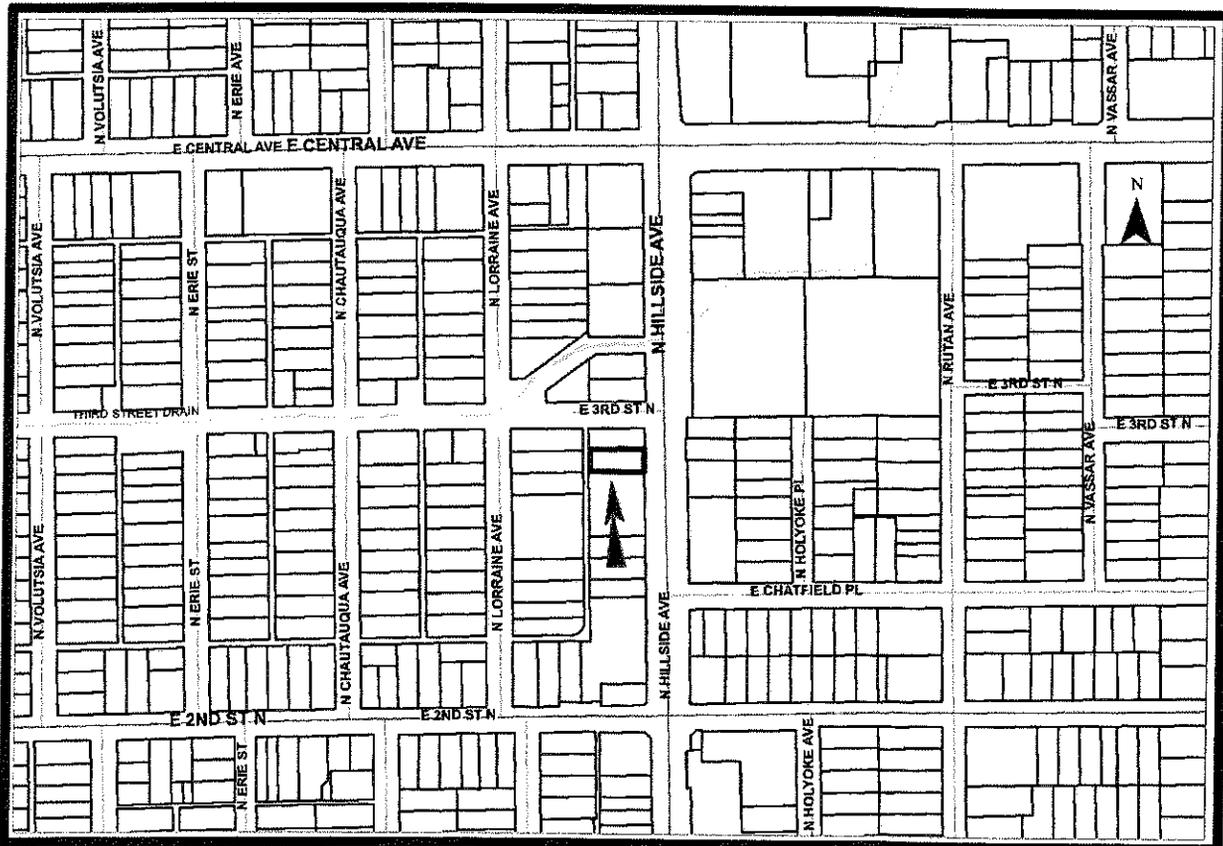
REQUEST: Conditional Use for a Personal Improvement Service

CURRENT ZONING: GO General Office

SITE SIZE: 0.15 acre

LOCATION: South of North 3rd Street on the west side of Hillside

PROPOSED USE: Massage Therapy Office



BACKGROUND: The applicant requests a Conditional Use for a “Personal Improvement Service” on property zoned GO General Office to operate a massage therapy business at 353 North Hillside. The site is located at the south of North 3rd Street on the west side of Hillside. The property is currently developed with a two-story commercial building on the 0.15-acre site with on-site parking, as shown on the attached site plan.

Residential and office uses abut the subject property. West of the site is zoned TF-3 Two-Family Residential, north is B Multi-Family Residential, east and south of the site is zoned GO.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines “Personal Improvement Service” as an establishment primarily engaged in the provision of informational, instructional, personal improvement and similar services of a non-professional nature. Typical uses include portrait shops, photography studios, art and music schools, licensed massage therapists, health and fitness studios, swimming clubs and handicraft or hobby instruction.

CASE HISTORY: The City Council passed Ordinance 50-190 on April 29, 2016 requiring massage therapy business to obtain a City license and show proof of accredited training. The owner of the massage therapy business has operated in this location for several years without complaint. The request for the conditional use is to bring the business into compliance with the Unified Zoning Code.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|------|--------------------------------------|
| NORTH: | B | Office |
| SOUTH: | GO | Medical Services, eye clinic |
| EAST: | GO | Medical Services, dialysis |
| WEST: | TF-3 | Single-family residences, vacant lot |

PUBLIC SERVICES: The property is serviced by all publicly supplied municipal services. Hillside is a five-lane arterial street. The site has one access point to Hillside as well as access to the paved parking area from the paved alley at the rear of the lot.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the downtown core and mature neighborhoods surrounding it in a roughly three-mile radius. The Plan encourages infill development within the Established Central Area that maximizes public investment in existing and planned infrastructure and services. The site is also located within the Central Northeast Area Plan Update adopted in September 2005, which identifies retention of businesses in the area as one of the goals of the plan.

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

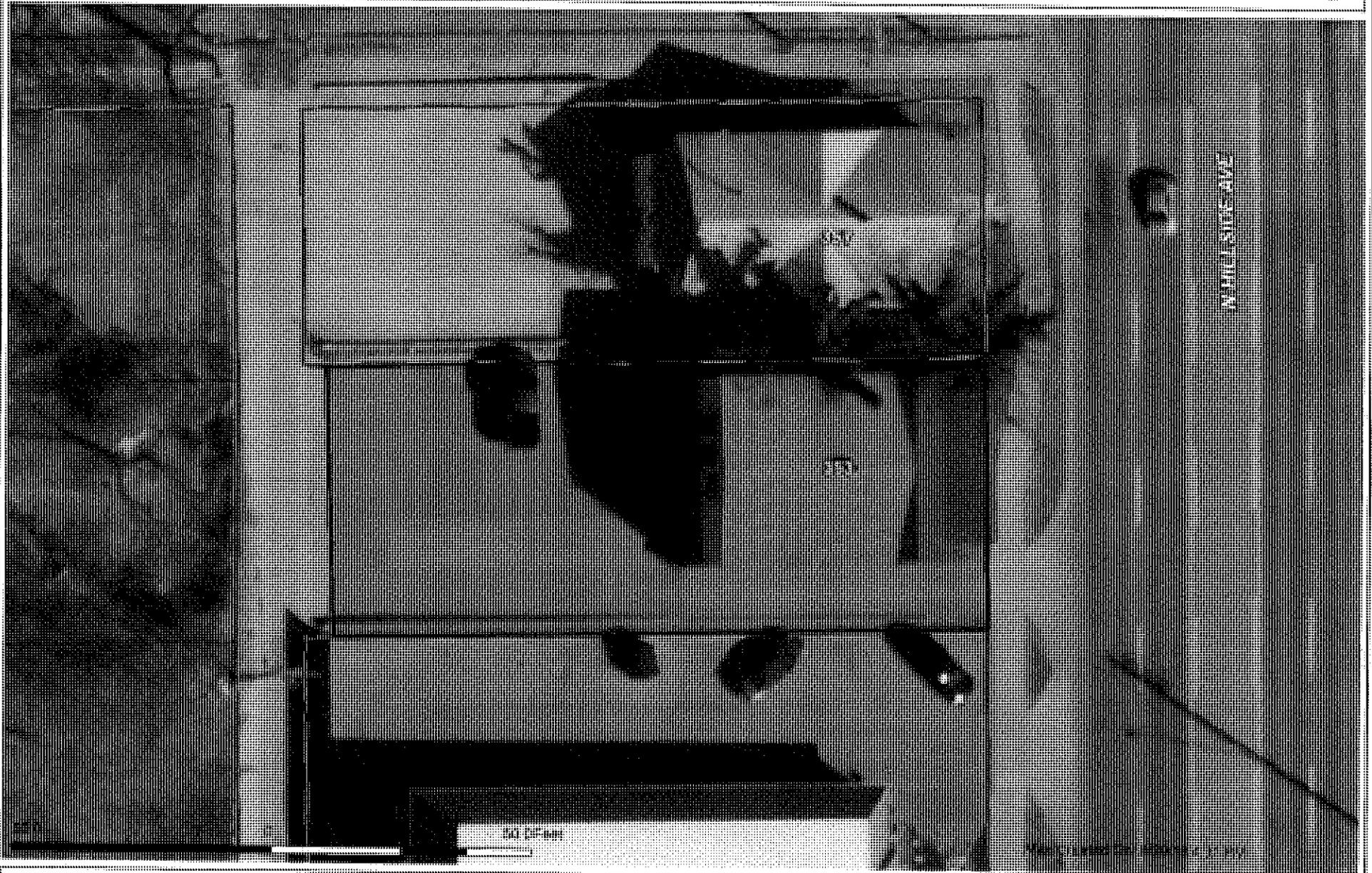
1. The site shall be developed and maintained in general conformance with the approved site plan, and in conformance with all applicable regulations, including but not limited to: licensing requirements, building, fire and utility regulations or codes.
2. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Residential and office uses about the subject property. West of the site is zoned TF-3 Two-Family Residential, north is B Multi-Family Residential, east and south of the site is zoned GO.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned GO which allows a conditional use approval for personal improvement services.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby properties. The site is developed with adequate on-site parking to accommodate the use.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the downtown core and mature neighborhoods surrounding it in a roughly three-mile radius. The site is also located within the Central Northeast Area Plan Update adopted in September 2005, which identifies retention of businesses in the area as one of the goals of the plan.
5. Impact of the proposed development on community facilities: No additional community facilities demand will be created by allowing this request.



CON2016-00042 Site Plan



30' Easement

This information is not an official record, and should be used as such. The user should only use official records available from the custodian of records in the appropriate City and/or County department. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita.

1:300 

STAFF REPORT

DAB I October 3, 2016
MAPC September 29, 2016

CASE NUMBER: CON2016-00043

APPLICANT/AGENT: Paul Jeffrey Prichard Trust (owner)/ K.E. Miller Engineering (Agent)

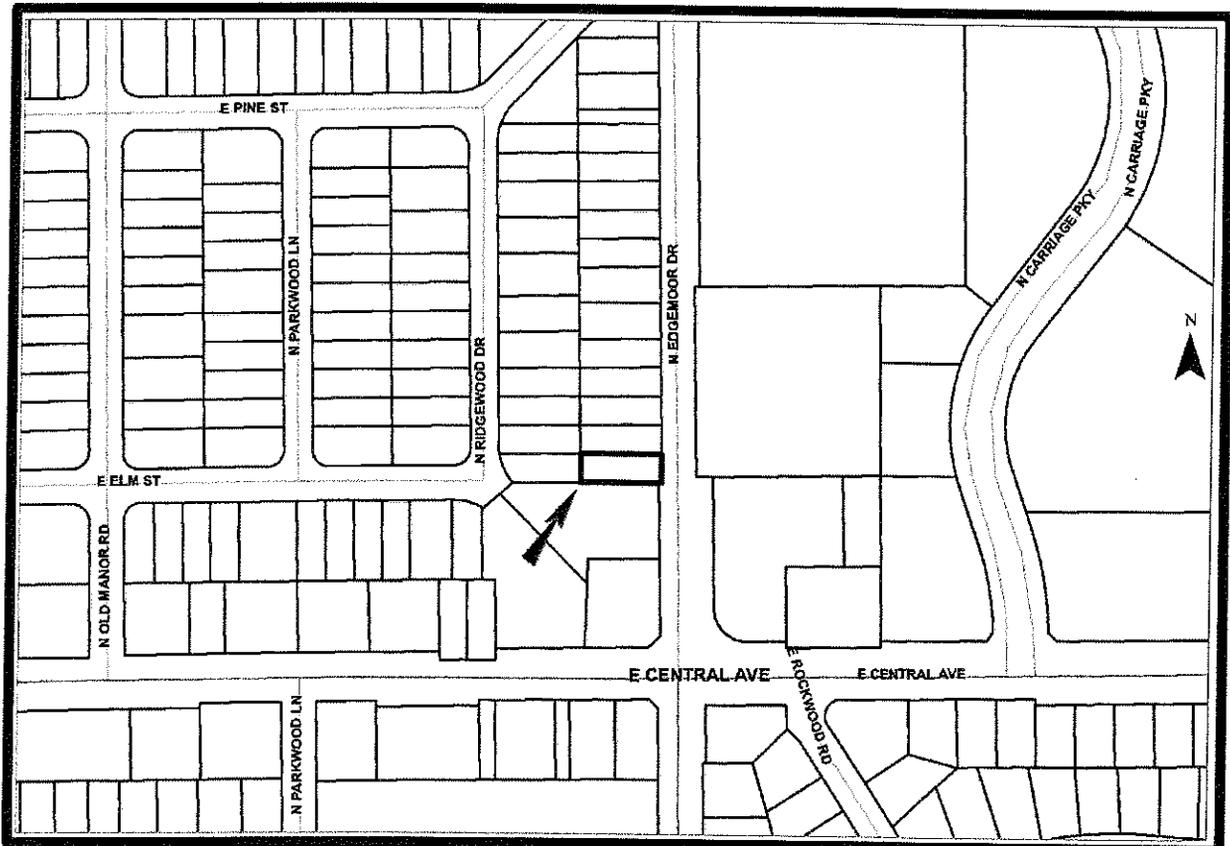
REQUEST: Conditional Use for a Personal Improvement Service

CURRENT ZONING: GO General Office

SITE SIZE: 0.16 acre

LOCATION: North of East Central on the west side of Edgemoor

PROPOSED USE: Massage Therapy Office



conditions:

1. The site shall be developed and maintained in general conformance with the approved site plan, and in conformance with all applicable regulations, including but not limited to: licensing requirements, building, fire and utility regulations or codes.
2. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Residential, retail and office uses abut the subject property. West of the site is zoned SF-5 Single-family Residential, north is GO General Office, east of the site is zoned SF-5. South of the site on the northwest and northeast corner of Central and Edgemoor is LC Limited Commercial zoning.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned GO which allows a conditional use approval for personal improvement services.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby properties. The site is developed with adequate on-site parking to accommodate the use.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the downtown core and mature neighborhoods surrounding it in a roughly three-mile radius. The site is also located within the Central Northeast Area Plan Update adopted in September 2005, which identifies retention of businesses in the area as one of the goals of the plan.
5. Impact of the proposed development on community facilities: No additional community facilities demand will be created by allowing this request.

BACKGROUND: The applicant requests a Conditional Use for a “Personal Improvement Service” on property zoned GO General Office to operate a massage therapy business at 603 North Edgemoor. The site is located north of East Central on the west side of Edgemoor. The property is currently developed with a one-story commercial building on the 0.16-acre site with on-site parking, as shown on the attached site plan.

Residential, retail and office uses abut the subject property. West of the site is zoned SF-5 Single-family Residential, north is GO General Office, east of the site is zoned SF-5. South of the site on the northwest and northeast corners of Central and Edgemoor is LC Limited Commercial zoning.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines “Personal Improvement Service” as an establishment primarily engaged in the provision of informational, instructional, personal improvement and similar services of a non-professional nature. Typical uses include portrait shops, photography studios, art and music schools, licensed massage therapists, health and fitness studios, swimming clubs and handicraft or hobby instruction.

CASE HISTORY: The City Council passed Ordinance 50-190 on April 29, 2016 requiring massage therapy business to obtain a City license and show proof of accredited training. The owner of the massage therapy business has operated in this location for several years without complaint. The request for the conditional use is to bring the business into compliance with the Unified Zoning Code.

ADJACENT ZONING AND LAND USE:

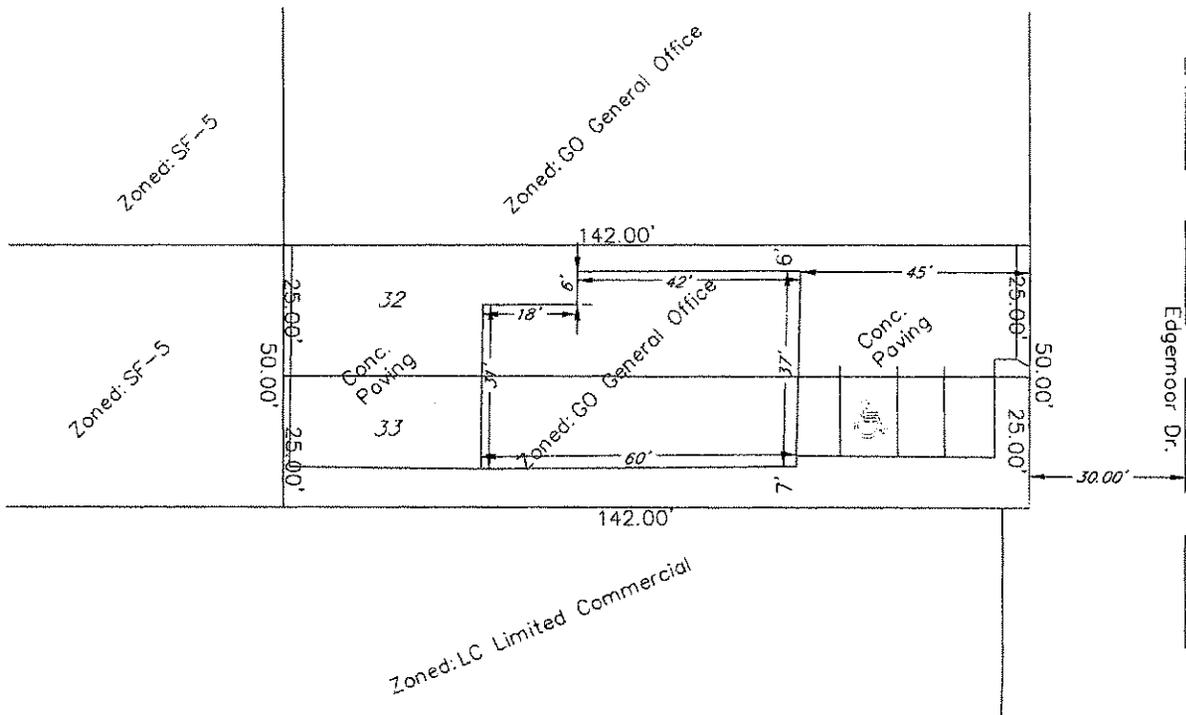
| | | |
|--------|------|------------------------------------|
| NORTH: | GO | Office |
| SOUTH: | LC | Strip center, fast food restaurant |
| EAST: | SF-5 | Vacant National Guard Armory |
| WEST: | SF-5 | Single-family residences |

PUBLIC SERVICES: The property is serviced by all publicly supplied municipal services. Edgemoor is a paved four-lane local street. The site has shared access drive to Edgemoor with the property to the north. Access to the overflow parking area at the rear of the site is provided by this shared drive.

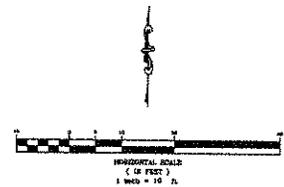
CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the downtown core and mature neighborhoods surrounding it in a roughly three-mile radius. The Plan encourages infill development within the Established Central Area that maximizes public investment in existing and planned infrastructure and services. The site is also located within the Central Northeast Area Plan Update adopted in September 2005, which identifies retention of businesses in the area as one of the goals of the plan.

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

*Site Plan For Magical Spa
 Conditional Use Permit
 Lots 32-33, Block 11, East Highlands Add.
 Wichita, Sedgwick County, Kansas*



*Applicant: Paul Jeffrey Prichard Trust
 Agent: K.E. Miller Engineering PA*



16121 Magical Spa prepared: 6-5-2016

KEMILLER
 ENGINEERING PA
117 E. 4th, Wichita, KS 67202 (316)284-0242

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

DATE: September 29, 2016
TO: Metropolitan Area Planning Commission
FROM: Scott Knebel, AICP, Advanced Plans Division
SUBJECT: DER2016-02: Wireless Communication Master Plan

Background: Senate Substitute for House Bill No. 2131 was recently passed by the Kansas House and Senate. The bill has numerous State mandates regarding how local units of government can regulate wireless communication facilities. Wichita-Sedgwick County regulations of wireless communication facilities are based on the Wireless Communication Master Plan.

The following is a high-level summary of the State mandates that will need to be addressed through an amendment of the Wireless Communication Master Plan and the Wichita-Sedgwick County Unified Zoning Code (UZC). The bill prohibits the following established practices:

- 1) Requiring applicants to document that no collocation opportunity is available prior to permitting construction of a new wireless communication facility.
- 2) Requiring applicants to demonstrate that a wireless communication facility addresses a wireless service provider need rather than being constructed as a speculative facility.
- 3) Evaluating the merits of an application based on collocation opportunities.
- 4) Requiring small cell facilities in lieu of macro facilities in visually/ environmentally sensitive locations.
- 5) Requiring applicants to agree to permit collocation on their facility by other service providers as a condition of approval.

Additionally, the bill deems an application for a wireless communication facility approved if the application is not acted upon within 150 days for a new facility or 60-90 days (depending on type) for a collocation application. Finally, the bill requires equal treatment of wireless communication facilities with utility installations when applying to locate in right-of-way but establishes a right-of-way fee cap on local governments that is significantly lower than the fee charged utilities.

Staff in consultation with the Advanced Plans Committee has developed the attached drafts of the Wireless Communication Master Plan, September 2016 and the Amendments to the Wichita-Sedgwick County of the Unified Zoning Code. Combined, these documents contain the amendments to the Wichita-Sedgwick County Comprehensive Plan and Unified Zoning Code needed to comply with changes to State law.

The Metropolitan Area Planning Commission (MAPC) set a public hearing for August 18, 2016, to consider adopting the Wireless Communication Master Plan, September 2016 as an element of the Wichita-Sedgwick County Comprehensive Plan and to consider adopting implementing amendments of the Wichita-Sedgwick County Unified Zoning Code (UZC).

At the August 18, 2016, hearing, the MAPC tabled the item until September 29, 2016, to allow time for revisions to be prepared to the design guidelines for wireless communication facilities located in the right-of-way. The revisions are contained in the attached Draft Wireless Communication Master Plan, September 2016, which was recommended for approval by the Advanced Plans Committee at their September 22, 2016, meeting.

Additionally, on September 12, 2016, the Delano Advisory Committee reviewed the provisions of the D-O Delano Neighborhood Overlay District and recommended that wireless communication facilities be permitted in the D-O District with Conditional Use approval rather than prohibited. The recommended changes are contained in the attached Draft Amendments to the Wichita-Sedgwick County of the Unified Zoning Code.

Recommended Action: Approve the resolution adopting attached Draft Wireless Communication Master Plan, September 2016 as an element of the Wichita-Sedgwick County Comprehensive Plan and recommend that the governing bodies adopt the attached Draft Amendments to the Wichita-Sedgwick County of the Unified Zoning Code.

This recommendation is based on the following findings.

1. **The extent to which removal of the restrictions will detrimentally affect nearby property:** While the proposed amendments provide regulations and development standards that are less restrictive than existing regulations, the proposed amendments comply with state law and help mitigate detrimental impacts on nearby properties from the development of wireless communication facilities.
2. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon property owners:** The proposed amendments will further the health, safety, and welfare of the community by providing regulations that increase the compatibility of wireless communication facilities with surrounding properties and give those property owners more notice of potential facilities than would otherwise be provided under the provisions of state law alone. The proposed amendments comply with state law and provide sufficient development opportunities for wireless communication facilities as to not create an undue hardship for developers of facilities.
3. **Conformance of the requested change to the adopted or recognized Comprehensive Plan:** The adopted 2035 Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, inadvertently does not have an element addressing wireless communication plan. Adopting the Wireless Communication Master Plan, September 2016 will provide the needed guidance in the Comprehensive Plan regarding wireless communication facilities.

4. **Impact of the Proposed Development on Community Facilities:** The Wireless Communication Master Plan, September 2016, provides guidance for wireless communication facilities located within the public right-of-way to help mitigate detrimental impacts on traffic or pedestrian safety and existing or planned locations of utilities, drainage, street lights, sidewalks, driveways, turn lanes, etc.

Attachment: Resolution
Draft Wireless Communication Master Plan, September 2016
Draft Amendments to the Wichita-Sedgwick County of the Unified Zoning Code

RESOLUTION

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

WHEREAS, pursuant to the authority granted by the statutes of the State of Kansas, in K.S.A. 12-747 et seq., the Wichita-Sedgwick County Metropolitan Area Planning Commission developed a Comprehensive Plan, entitled Community Investments Plan that was adopted by the City of Wichita on December 8, 2015, and Sedgwick County on January 20, 2016; and

WHEREAS, the Comprehensive Plan may be amended as needed to ensure it reflects timely and relevant information and the needs of the community; and

WHEREAS, the Metropolitan Area Planning Commission did initiate an update of the Wireless Communication Master Plan to reflect changes to Kansas State Law enacted by Senate Substitute for House Bill 2131; and

WHEREAS, before the adoption of any Comprehensive Plan or amendment thereto, the Wichita-Sedgwick County Metropolitan Area Planning Commission is required by K.S.A. 12-747 et seq. to hold a public hearing; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission did give notice by publication in the official City and County newspaper on July 28, 2016, of a public hearing on said Plan; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission, on August 18, 2016, tabled the public hearing to September 29, 2016, and on September 29, 2016, did hold a public hearing at which a quorum was present, and did hear all comments and testimony relating to said area plan;

NOW, BE IT THEREFORE RESOLVED, the Wichita-Sedgwick County Metropolitan Area Planning Commission hereby adopts the Wireless Communication Master Plan, September 2016, as an official amendment to the Wichita-Sedgwick County Comprehensive Plan; and

BE IT FURTHER RESOLVED, that notice of this action be transmitted to the City Council of the City of Wichita and to the Sedgwick County Board of County Commissioners for their consideration and adoption.

ADOPTED at Wichita, Kansas, this 29th day of September 2016.

Carol Chapman Neugent, Chair
Wichita-Sedgwick County
Metropolitan Area Planning Commission

Attest:

Approved as to Form:

Dale Miller, Secretary
Wichita-Sedgwick County
Metropolitan Area Planning Commission

Jennifer Magana, City Attorney and Director of Law
City of Wichita

Wireless Communication Master Plan

Prepared by:

Wichita-Sedgwick County Metropolitan Area Planning Department

With the assistance of:

City of Wichita Engineering Division

Sedgwick County Public Works

September 2016

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I. Background

In 1999, the City of Wichita and Sedgwick County determined that they needed a clearer framework to review proposals for wireless communication facilities. An extensive planning process was initiated that included outreach to the community and wireless communication industry representatives. Community workshops and a wireless industry roundtable were held. Wireless industry representatives were surveyed and meetings were held with individual industry representatives. After a joint workshop with the Wichita City Council, Sedgwick County Commission and Metropolitan Area Planning Commission (MAPC) to review a draft plan, a city-county staff task force was assigned to meet further with the various stakeholders and prepare revisions to the draft plan. The city-county task force held numerous meetings with stakeholders from December 1999 through July 2000. In July 2000, the MAPC adopted the Wireless Communication Master Plan (“the Plan”) as an element of the Wichita-Sedgwick County Comprehensive Plan. The Plan was subsequently approved by the Wichita City Council and the Sedgwick County Commission in August 2000.

Implementing revisions to the Wichita-Sedgwick County Unified Zoning Code (UZC) were approved at the same time. The UZC revisions were based on the Plan’s recommendations to limit the overall number of wireless communication facilities by promoting collocation of multiple providers’ antennas at a single facility. The UZC revisions also addressed visual obtrusiveness by restricting the tallest towers to heavy commercial and industrial areas, requiring setbacks from low-density residential areas, and promoting the use of monopole rather than lattice-type towers. Over the next ten years, over 100 new wireless communication facilities were built in the community, most of them monopole towers located in commercial areas that supported multiple providers’ antennas.

In March 2011, the Plan was updated to reflect modifications made in 2008 to the UZC pertaining to the heights and zoning districts in which Administrative Permits could be granted, as well the limitation of Administrative Permits within the city limits to certain designated properties. The March 2011 update also included revisions that clarified when it is acceptable to use a lattice-type tower and when it is acceptable to use a monopole.

In 2016, the Kansas Legislature adopted Senate Substitute for House Bill No. 2131, which declared the regulation of wireless communication facilities to be a state-wide interest and directed the approach of cities and counties to regulate wireless communication facilities. The bill prohibits the following established practices of the City of Wichita and Sedgwick County:

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- 1) Requiring applicants to document that no collocation opportunity is available prior to permitting construction of a new wireless communication facility.
- 2) Requiring applicants to demonstrate that a wireless communication facility addresses a wireless service provider need rather than being constructed as a speculative facility.
- 3) Evaluating the merits of an application based on collocation opportunities.
- 4) Requiring small cell facilities in lieu of macro facilities in visually/ environmentally sensitive locations.
- 5) Requiring applicants to agree to permit collocation on their facility by other service providers as a condition of approval.

Additionally, the bill deems an application for a wireless communication facility approved if the application is not acted upon within 150 days for a new facility or 60-90 days (depending on type) for a collocation application. The bill also requires that small cell facilities or distributed antennae systems located in an interior structure or upon the site of any campus, stadium, or athletic facility be permitted by right. Finally, the bill requires equal treatment of wireless communication facilities with utility installations when applying to locate in right-of-way but establishes a right-of-way fee cap on local governments that is lower than the fee charged utilities.

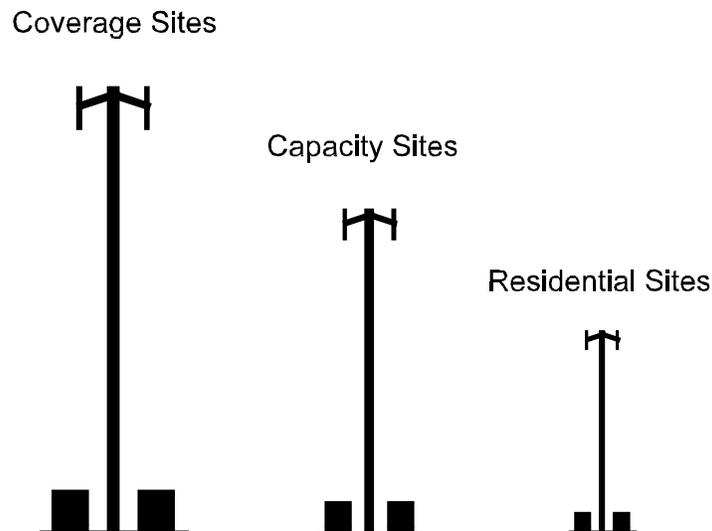
The September 2016 update of the Wireless Communication Master Plan addresses the state-mandated approach to reviewing proposals for wireless communication facilities. The updated Plan also has corresponding implementing revisions to the UZC.

II. Wireless Communication Deployment

Wireless communication has evolved from a niche business catering to corporate executives in the early 1990s to a ubiquitous communication tool used by almost everyone less than 25 years later. As the business has evolved, the number of wireless communication facilities in Wichita and Sedgwick County has grown from a few dozen in the early 1990s to several hundred today. By the year 2035, there may well be thousands of wireless communication facilities. They wireless communication facilities have deployed in three phases:

- Coverage. The initial phase occurred primarily between mid-1990s and mid-2000s when carriers tried to spread their signal throughout the community in an attempt to reach new subscribers.
- Capacity. Following the coverage phase, new capacity sites were built between the coverage sites to address areas where a high number of users are located.
- Residential. The current phase of the business plan involves the replacement of most wired phones in customers' homes with wireless devices that are used more for text and data than for voice communication.

The last phase of deployment brings wireless communication facilities into residential areas where they are restricted to shorter facilities, as illustrated below.



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The impact of the phases of wireless communication deployment in Wichita and Sedgwick County are:

- Coverage. Most areas of Wichita and Sedgwick County presently have coverage. The construction of additional wireless communication facilities to provide coverage will be limited in the future and are mostly like to occur in rural areas.
- Capacity. As areas of the community grow in population, the demand on the wireless communication systems will exceed the capacity of the coverage sites and providers will need new sites in developing areas to add capacity. These sites mostly can be accommodated in commercial areas and along major roadways.
- Residential. As the use of wireless devices in homes continues to increase, it is likely that there will have to be many more sites for each provider located immediately within residential areas. These mostly likely deployment of these sites will be small cell facilities and distributed antenna systems located in street right-of-way, as illustrated below.



The challenge of planning for wireless communication facilities is the same as that for many other land uses: balancing marketplace demands with public expectations for an orderly and attractive environment. This Plan anticipates and guides future wireless communication deployment with guidelines and policies that should be applied in the review of proposed new wireless communication facilities.

III. Location/Design Guidelines

This chapter contains guidelines for location, siting and design of new wireless communication facilities. The term “guidelines” is used in recognition that deviations from these guidelines can be considered on a case-by-case basis, if consistent with the general spirit and intent of this Plan.

The intent of the Location/Design Guidelines is to balance marketplace demands for deployment of wireless communication facilities with the community’s desire for an orderly and attractive environment. In general, tall wireless communication facilities should be limited to heavy commercial and industrial areas and should decrease in height as the intensity of development decreases, with the shortest facilities being located in residential areas. Additionally, facilities should be located and designed in a manner that minimizes visual obtrusiveness and negative aesthetic impacts on surrounding properties.

A. Location/Height Guidelines

1. The following wireless communication facilities should be permitted by right in any zoning district, subject to the issuance of a building permit, if they conform to the Location/Design Guidelines in this chapter. Note that right-of-way is not zoned and has separate permitting requirements described below in Section C.
 - a. New facilities that are concealed in or mounted on top of or the side of existing buildings (excluding single-family and duplex residences) and other structures, including collocation and support structures up to 20 feet above the building or the maximum height permitted by a building permit or an Administrative Permit in the underlying zoning district, whichever is greater.
 - b. Modification and/or replacement of support structures that are not significantly more visible or intrusive, including collocation and cumulative height extensions of up to 25 percent above the original structure height.
 - c. Modification and/or replacement of wireless communication facilities, including collocation and cumulative height extensions of up to 25 percent above the original structure height that comply with the compatibility height standards of the Unified Zoning Code.
 - d. New or modified lattice towers no larger than 18 inches wide on any side up to 80 feet in height measured from grade.
 - e. Small cell facilities or distributed antennae systems located in an interior structure or upon the site of any campus, stadium, or athletic facility.

If the Zoning Administrator determines that the wireless communication facility does not conform to the Location/Design Guidelines, the building permit should be denied. Denied building permits may be appealed by applying for an Administrative Permit or a Conditional Use. An Administrative Permit should be approved subject to conditions that maintain conformance with the Location/Design Guidelines. Wireless communication facilities that do not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant.

2. The following wireless communication facilities should be approved by Administrative Permit in any zoning district, with the concurrence of the Director of Planning and the Zoning Administrator, if they conform to the Location/Design Guidelines in this chapter and, for zoning lots located within the City, are designated on the “Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map”. Note that right-of-way is not zoned and has separate permitting requirements described below in Section C.
 - a. New disguised ground-mounted facilities up to 85 feet in height.
 - b. New undisguised ground-mounted facilities up to 65 feet in the SF-10, SF-5, TF-3, MF-18, MF-29, B, U, and MH zoning Districts that comply with the compatibility height standards of the Unified Zoning Code.
 - c. New undisguised ground-mounted facilities up to 85 feet in height in the NO, GO, and NR zoning districts that comply with the compatibility height standards of the Unified Zoning Code.
 - d. New undisguised ground-mounted facilities up to 120 feet in the RR, SF-20, LC, OW, and GC zoning Districts that comply with the compatibility height standards of the Unified Zoning Code.
 - e. New ground-mounted facilities up to 150 feet in height in the IP, CBD, LI, GI, and AFB zoning districts that comply with the compatibility height standards of the Unified Zoning Code.
3. Wireless communication facilities that exceed the maximum height for an Administrative Permit should be reviewed through the Conditional Use process. Conditional Use approvals typically should be subject to conditions that maintain conformance with the Location/Design Guidelines in this chapter; however, wireless communication facilities that do not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant. Note that right-of-way is not zoned and has separate permitting requirements described below in Section C.

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4. There should be no nighttime lighting of or on wireless communication facilities except for aircraft warning lights or similar emergency warning lights required by applicable governmental agencies. Flashing white obstruction lights should not be permitted for nighttime operation. Lighting for security purposes should be permitted at the base of wireless communication facilities. Temporary lighting for nighttime repairs should be permitted.
5. No signs should be allowed on a wireless communication facility other than those required by applicable governmental agencies.
6. The owner should be responsible for the removal of unused facilities, including the uppermost 20% of support structures that are unused (except where removal of the uppermost 20% would require the removal of a lower portion the support structure that is in use, in which case the required removal will be raised to the next highest portion of the support structure not in use), within 60 days if the wireless communication facility, or portion thereof, has been unused for 12 consecutive months. If such a facility or portion of a facility is not removed by the owner, then the City or County may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove it, and after removal may place a lien on the subject property for all direct and indirect costs incurred in its dismantling and disposal, including court costs and reasonable attorney fees. Under this paragraph, “owner” includes both the owner of the real property and the owner of the wireless communication facility, whether such ownership is divided or in the same person.
7. All wireless communication facilities should comply with all federal, state, and local rules and regulations.

Wireless communication providers are particularly encouraged to seek the following new locations for new facilities:

1. Mounted on top or the side of multistory buildings and other structures, appropriately concealed, screened, disguised or camouflaged.
2. On existing utility poles in street right-of-way and on parking lot and athletic field/stadium light standards.
3. On existing support structures, including those constructed for school district microwave antennas and private dispatch systems.
4. In wooded areas.

5. At certain City and County-owned properties, where the size and nature of the use does not interfere with other functions and allows for compatible siting; these may include multistory buildings, water towers, large park areas, sewer treatment plant sites, maintenance yards, and public airports.
6. The City and County should also work with public and private agencies such as KDOT, KTA, and Westar, to encourage the use of highway light standards, sign structures, and electrical support structures for new wireless communication facilities.

B. Design Guidelines

As a general rule, the less visible and obtrusive a proposed wireless communication facility is, the more acceptable it will be to the community. The visibility of facilities can be minimized by techniques such as concealment, disguise, camouflage, and sensitive design and siting. Specific guidelines include:

1. Preserving the pre-existing character of the area as much as possible.
2. Minimizing the height, mass or proportion of the facility to minimize conflict with the character of its proposed surroundings.
3. Minimizing the silhouette presented by new support structures and antenna arrays. Lattice-type support structures are generally appropriate in areas outside the “Urban Growth Areas” identified in the Wichita-Sedgwick County Comprehensive Plan. Lattice-type support structures inside the Urban Growth Area boundaries generally should be limited to installations that have antennas mounted flush to the support structure with cables attached to the main support arms rather than the girders. When an antenna array that protrudes from the wireless communication facility is used on a support structure inside the Urban Growth Area boundaries, the support structure generally should be a monopole. The figure below illustrates the types of support structures that are “encouraged” and “discouraged” by this section.

Encouraged



Discouraged



4. Using colors, textures and materials that blend in with the existing environment and minimize reflection; under some circumstances, surfaces should be painted, or otherwise treated, to match or complement existing background structures or utility poles, as appropriate.
5. Concealing facilities within potential space in or on existing structures, or disguised to look like another type of facility, like a flagpole, clock tower, or church steeple.
6. Placing facilities in areas where trees and/or buildings obscure some or all the facility from view, and installing new plantings/screening around the site where visible from major streets or residential areas.
7. Placing facilities on existing walls, flush-mounted, or on roofs buildings (excluding single-family and duplex) and structures, up to 20 feet above the existing structure, as opposed to building new ground-mounted support structures. Facilities on rooftops generally should be set back from roof edges or screened from view.
8. Screening equipment shelters and cabinets through landscaping, walls and/or fencing, as appropriate to the surroundings. In most cases, ground-level equipment should respect the setbacks for accessory uses in the applicable zoning district and be enclosed by 6-8 foot high security fencing, of a material compatible with its surroundings. Equipment should be encouraged indoors if space is available nearby. Burying equipment in an underground vault, to keep most of the equipment out of sight, may be necessary in right-of-way and in some other visually/environmentally sensitive locations, such as tourist attractions, historic landmarks/districts, museum district, river corridor, and other locations of civic importance or architectural significance. Ground level shelters/equipment, appropriately screened and generally landscaped with trees and/or shrubs, should be permitted on lots adjacent to right-of-way, to facilitate the use or reconstruction of utility poles in those right-of-way.
9. Permitting lighting on facilities only if required by federal regulations.

C. Right-of-Way

City and County right-of-way is an encouraged location for wireless communication facilities, particularly for small cell facilities and distributed antenna systems. Locating wireless communication facilities in the right-of-way requires an agreement with the City or County, as applicable. Such agreements should include an ongoing rental fee, as allowed by law, to ensure that private

property owners are not at a competitive disadvantage to the public sector in regards to renting land for the location of wireless communication facilities. However, state law requires that any rental fee for right-of-way must be competitively neutral with fees charged to other users of the right-of-way such utility companies.

In addition to the design guidelines described in Section B above, wireless communication facilities should also meet the following additional design guidelines when located in the right-of-way:

1. Adjoining Property Owners

To the extent practical, the design and location should be changed to mitigate an adjoining property owner’s concerns and increase consistency with the guidelines of this Plan.

2. Wiring – Underground or Aerially

Facility wiring should be installed underground and within the support structure or within conduit immediately attached to the support structure. Facility wiring should not cross over, under, or through private property.

3. Public Safety

Place facilities in locations that are outside of the clear zone and do not cause a sight obstruction for the traveling public and/or obstruct pedestrian safety.

4. Right-of-Way/Utility Accommodations

Place facilities in locations to do not hinder existing or planned uses of the right-of-way such as utilities, drainage, street lights, sidewalks, driveways, turn lanes, etc.

5. Facility Height

The height of facilities should not exceed 40 feet above ground level unless authorized by the applicable City of County Engineer, or designee.

6. Poles

Replacing or utilizing existing utility poles is encouraged and installing new support structures solely for the wireless communication facility is discouraged. The figure below illustrates the types of support structures that are “encouraged” and “discouraged” by this guideline.

Encouraged



Replacement of Existing Light Pole

Discouraged



New Pole Installation

E. Submittal Requirements

Review of proposals for wireless communication facilities will be greatly aided by using a set of standardized submittal requirements. This Plan suggests the following submittal requirements:

1. A scaled vicinity plan, dimensioned and identifying existing buildings, trees, and other features within 200 feet of the wireless communication facility in the City of Wichita or within 1,000 feet of the wireless communication facility in the unincorporated area of Sedgwick County.
2. A one-inch-equals-20 feet site plan, dimensioned, identifying the location of all facility elements.
3. Typical elevations of all facility elements, dimensioned.
4. Specification of exterior materials and colors of all facility elements.
5. Landscape/ screening plan, with all materials and sizes specified.
6. Appearance of proposed facility shown in site context by photo-simulation.

Appendix A: Definitions

Applicant. Any person or entity that is engaged in the business of providing wireless services or the wireless infrastructure required for wireless services and that submits an application.

Application. A request submitted by an applicant for: (A) the construction of a new wireless support structure or new wireless facility; (B) the substantial modification of a wireless support structure or wireless facility; or (C) collocation of a wireless facility or replacement of a wireless facility.

Collocation. Mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.

Distributed Antenna System. A network that distributes radio frequency signals and consisting of: (A) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception; (B) a high capacity signal transport medium that is connected to a central communications hub site; and (C) radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

Lattice Tower. A type of support structure that consists of an open network of braces forming a tower that is usually triangular or square in cross section.

Modification and/or Replacement. Modification of a support structure or wireless communication facility of comparable proportions and of comparable height or such other height that would not constitute a substantial modification in order to support wireless facilities or to accommodate collocation and includes replacement of any pre-existing wireless communication facility or support structure.

Monopole. A type of support structure that consists of a vertical pole fixed into the ground and/or attached to a foundation.

Right-of-Way. The area of real property in which the City or County has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. "Right-of-way" does not include any state, federal or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with,

and is generally equidistant from the center of that portion of the highway improved, designed or ordinarily used for public travel.

Small Cell Facility. A wireless communication facility that meets both of the following qualifications: (A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (B) primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

Substantial Modification. Modification of a wireless communication facility or support structure that will substantially change the physical dimensions under the objective standard for substantial change, established by the federal communications commission pursuant to 47 C.F.R. 1.40001.

Support Structure. A freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities, and any structure that is currently supporting or designed to support the attachment of wireless facilities, including, but not limited to, towers, buildings and water towers.

Utility Pole. A structure owned or operated by a public utility as defined in K.S.A. 66-104, and amendments thereto, a municipality as defined in K.S.A. 75-6102, and amendments thereto, or an electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

Wireless Communication. Personal wireless services and personal wireless service facilities as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through a wireless communication facility or any fixed or mobile wireless services provided using a wireless communication facility.

Wireless Communication Facility. Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) a support structure consisting of a freestanding support structure, such as a monopole, guyed, or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities; (B) a base station that supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics; (C) equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and/or (D) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

Appendix B: Adopting Documents

[insert documents]

**Amendments to the Wichita-Sedgwick County of the Unified Zoning Code
Required by Senate Substitute for House Bill No. 2131
and Including Recommended Delano Overlay Amendments**

Section II-B.14.p. and Section II-B.14.q.

- p. Wireless Communication** means ~~wireless services covered by the Location/Design Guidelines of the Wireless Communication Master Plan. It includes the following terms as defined in the Wireless Communication Master Plan as adopted by the Governing Bodies: broadcast systems, cellular, commercial mobile radio services, common carrier wireless access exchange services, enhanced specialized mobile radio, functionally equivalent services, personal communication services, paging, personal wireless services, public service and emergency systems, specialized mobile radio, tower builder, unlicensed wireless services and wireless cable system. It does not include amateur radio or private dispatch system as defined in the Wireless Communication Master Plan as adopted by the Governing Bodies~~ personal wireless services and personal wireless service facilities as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through a Wireless Communication Facility or any fixed or mobile wireless services provided using a Wireless Communication Facility.
- q. Wireless Communication Facility** means ~~facilities covered by the Location/Design Guidelines of the Wireless Communication Master Plan. It includes the following terms as defined in the Wireless Communication Master Plan as adopted by the Governing Bodies: antenna, antenna array, equipment shelter, guyed tower, lattice tower, location, monopole, site, support Structure and tower.~~ a Lot containing equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) a wireless support structure consisting of a freestanding support structure, such as a monopole, guyed, or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities; (B) a base station that supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics; (C) equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and/or (D) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

Section III-C.8.b.

- b. Use Regulations.** The Use regulations of this Overlay District shall control over the Underlying zoning District.

- (1) **Prohibited Uses.** Subject to Section III-C.8.c(1)(b), the following Uses are explicitly prohibited in the D-O District, regardless if said Uses are stated as permitted or Conditional Uses in the Underlying Districts:

Asphalt or Concrete Plant, Limited and General
Businesses of an adult entertainment nature requiring a license under the Code of the City of Wichita, Chapters 3.05, 3.07, 3.56 and 3.74
Correctional Facility
Correctional Placement Residence, Limited and General
Gas and Fuel, Storage and Sales
Manufactured Home Subdivision
Manufactured Home Park
Mining or Quarrying
Oil and Gas Drilling
Rock Crushing
Sign (off-site)
Solid Waste Incinerator Vehicle
Storage Yard
~~Wireless Communication Facility~~
Wrecking/Salvage Yard

- (2) **Conditional Uses.** Subject to Section III-C.8.c(1)(b), the following Uses shall be allowed only as a Conditional Use in the D-O District, regardless if said Uses are stated as permitted Uses in the Underlying Districts:

Car Wash
Convenience Store
Freight Terminal
Manufacturing, General and Limited
Parking Area, Commercial
Restaurant (drive-in/drive-through)
Service Station
Storage, Outdoor
Utility, Major
Vehicle and Equipment Sales (indoor)
Vehicle and Equipment Sales, Outdoor
Vehicle Repair, General
Vehicle Repair, Limited
Warehouse, Self-service Storage
Warehousing
Wholesale or Business Services
Wireless Communication Facility, subject to Sec. III-D.6.g

Section III-D.6.

6. **Supplementary Use Regulations.** No permit shall be issued for any Development or Use of land unless the activity is in compliance with all applicable supplementary use regulations specified in this section, or unless the supplementary use regulations have been modified or waived by the Governing Body pursuant to the Development Review Procedures contained in Article V. The supplementary use regulations of this section are not applicable to Lots in the AFB Air Force Base

District. In the case of conflict with zoning District property Development standards or other regulations of this Code, the more restrictive requirement shall apply, unless otherwise specifically provided.

Section III-D.6.g.

g. Wireless Communication ~~Facilities~~ Facility. Whether allowed by right, subject to a Building Permit, by Administrative Permit, by CUP adjustment/amendment, by P-O adjustment/amendment or by Conditional Use approval, a Wireless Communication ~~Facilities~~ Facility shall be subject to the following provisions.

(1) ~~All~~ A Wireless Communication ~~Facilities~~ Facility shall be evaluated in terms of ~~their~~ conformance to the guidelines in the "Wireless Communication Master Plan" as adopted by the Governing Body, and applications for such facilities shall include information for review as required in that Plan.

(2) ~~The~~ A following Wireless Communication ~~Facilities are~~ Facility is permitted by right in any zoning District, subject to the issuance of a Building Permit, if ~~they conform~~ conforms to the Location/Design Guidelines in ~~this chapter~~ that Plan:

(a) new ~~facilities~~ facility that ~~are~~ is concealed in or mounted on top of or the side of existing buildings (excluding single-family and duplex residences) and other Structures, including support structures up to 20 feet above the Building or the maximum height permitted by a Building Permit or an Administrative Permit in the underlying zoning District, whichever is greater;

(b) modification and/or replacement of support structures (light poles, flag poles, electrical poles, private dispatch towers, etc.) that are not significantly more visible or intrusive, including cumulative height extensions of up to 25 percent above the original Structure height;

(c) modification and/or replacement of a Wireless Communication ~~Facilities~~ Facility, including cumulative height extensions of up to 25 percent above the original structure height that comply with the compatibility height standards as outlined in Sec. IV-C.5;

(d) new or modified lattice towers no larger than 18 inches wide on any side up to 80 feet in height measured from grade.

~~(d)~~(e) small cell facility or distributed antennae system located in an interior Structure or upon the site of any campus, stadium, or athletic facility.

If the Zoning Administrator determines that the Wireless Communication Facility does not conform to the Location/Design Guidelines, the Building ~~Permit~~ shall be denied. Denied Building Permits may be appealed by applying for an Administrative Permit or a Conditional Use. An Administrative Permit shall be approved subject to conditions that

maintain conformance with the Location/Design Guidelines. A Wireless Communication ~~Facilities~~ Facility that does not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant.

(3) ~~The following~~ A Wireless Communication ~~Facilities~~ Facility shall be approved by Administrative Permit in any zoning District, under the procedures in Sec. VI-G.9 and Sec. VI-H.5, if ~~they conform~~ conforms to the Location/Design Guidelines in the "Wireless Communication Master Plan" and, for zoning Lots located within the City, ~~are~~ is designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map" of Sec. I- L.:

- (a)** new disguised ground-mounted facilities up to 85 feet in height;
- (b)** new undisguised ground-mounted facilities up to 65 feet in the SF- 10, SF-5, TF-3, MF-18, MF-29, B and MH zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.d;
- (c)** new undisguised ground-mounted facilities up to 85 feet in the NO, GO and NR zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.d;
- (d)** new ground-mounted facilities up to 120 feet in height in the RR, SF- 20, U, LC, OW, and GC zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.d; or
- (e)** New ground-mounted facilities up to 150 feet in height in the IP, CBD, LI and GI zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.d.

If the property on which the facility is located is within a CUP or P-O, the Administrative Permit shall also be considered as an application for an adjustment of the CUP or P-O as outlined in Sec. V-E.14, excluding the requirement of V-E.14.a, or Sec. V-C.14, excluding the requirement of V-C.14.a., as applicable.

(4) ~~All~~ A Wireless Communication ~~Facilities~~ Facility that does not meet the requirements of Sec. III-D.6.g(2) or Sec. III-D.6.g(3) shall be reviewed through the Conditional Use process as outlined in Sec. V-D or, if the property on which the facility is located is within a CUP or P-O, as an amendment to the CUP or P-O as outlined in Sec. V-E.13. or Sec. V-C.13, as applicable.

(5) There shall be no nighttime lighting of or on a Wireless Communication ~~Facilities~~ Facility except for aircraft warning lights or similar emergency

warning lights required by applicable governmental agencies. Flashing white obstruction lights shall not be permitted for nighttime operation. Lighting for security purposes shall be permitted at the base of wireless communication facilities. Temporary lighting for nighttime repairs shall be permitted.

(6) No signs shall be allowed on ~~an antenna support structure~~ a Wireless Communication Facility other than those required by applicable governmental agencies.

~~**(7)** At the time of requesting a Conditional Use, a CUP amendment, a P-O amendment, an Administrative Permit, or a Building Permit for a new ground mounted Wireless Communication Facility, as applicable, the applicant shall demonstrate to the satisfaction of the approving authority that: (a) there is no available space on existing or approved wireless communication facilities or other structures that can be utilized to meet the communication needs (an existing site will be considered "available space" only if the site is technically feasible with a ready, willing, and able landlord); and (b) there is no other economically and technically feasible opportunity to modify or rebuild an existing structure on which the communication equipment may be located. The technical feasibility of existing, modified or rebuilt structures may be reviewed by consultants to the Planning Department.~~

~~**(8)** At the time of requesting a Conditional Use, a CUP amendment, a P-O amendment, an Administrative Permit, or a Building Permit for a Wireless Communication Facility, as applicable, the owner of a proposed new undisguised ground mounted Wireless Communication Facility, and the Owner of the land, if not the same, shall agree in writing that (a) the support structure is designed, and the ground area is adequate or will be made adequate, to accommodate at least one other carrier, if more than 80 feet in height, and at least two other carriers, if more than 100 feet in height; (b) reasonable accommodations will be made to lease space on the facility to other carriers so as to avoid having a proliferation of support structures that are not fully utilized; and (c) the owner(s) shall make available in the future the opportunity for another party to pay the cost to modify or rebuild the Structure to support additional communication equipment where economically and technically feasible. Lattice towers no larger than 18 inches on any side shall be excluded from the co location requirements of subsection (a) of this paragraph.~~

~~**(9)**~~**(7)** Unused facilities, including the uppermost 20 percent of support structures that are unused (except where removal of the uppermost 20 percent would require the removal of a lower portion the support structure that is in use, in which case the required removal will be raised to the next highest portion of the support structure not in use), shall be removed by the owner within 60 days if the Wireless Communication Facility, or portion thereof, has been unused for 12 consecutive months. If such a facility or portion of a facility is not removed by the owner, then the City or County may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove it, and after removal may place a lien on the subject property for all direct

and indirect costs incurred in its dismantling and disposal, including court costs and reasonable attorney fees. Under this paragraph, "owner" shall include both the Owner of the real property and the owner of the Wireless Communication Facility, whether such ownership is divided or in the same person.

~~(40)~~(8) All Wireless Communication Facilities shall comply with all federal, state, and local rules and regulations.

Section IV-C.5.

5. Compatibility Height standards. The following Height standards shall apply to Development that is subject to compatibility standards, unless reduced or waived through the provisions of Sec. V-I.2.

- a. No Structure ~~(except for wireless communication facilities)~~ shall exceed 35 feet in height within 50 feet of the lot line of property zoned TF-3 or more restrictive. Structures located more than 50 feet from the Lot Line of property zoned TF-3 or more restrictive may increase Height (if permitted by the base District regulations) at a ratio of one foot in Height for each three feet of Setback beyond 50 feet. For example, a ~~Building-Structure~~ limited to 35 feet in Height at 50 feet from the Lot Line of property zoned TF-3 or more restrictive could be increased to a Height of 85 feet at a distance of 200 feet from the Lot Line of property zoned TF-3 or more restrictive.
- b. ~~Wireless Communication Facilities shall not exceed a Height equal to the distance to the Lot Line of property zoned TF-3 or more restrictive. For example, a Wireless Communication Facility located 100 feet from the Lot Line of property zoned TF-3 or more restrictive cannot exceed a Height of 100 feet.~~

Section VI-B.7. (new)

~~**7. Zoning Adjustments.** The Governing Body shall have the authority to approve, approve with conditions or modifications, or deny zoning adjustments when requested in association with an application to amend the Official Zoning Map, an application for Community Unit Plan approval, or an application for Conditional Use approval.~~

Section VI-C.7. (new)

~~**7. Zoning Adjustments.** The Planning Commission shall have the authority to approve, approve with conditions or modifications, or deny zoning adjustments when requested in association an application for Conditional Use approval or for amendment to a Community Unit Plan and shall have the authority to recommend to the Governing Body approval, approval with conditions, or denial of a zoning adjustment when requested in association with an application to amend the Official Zoning Map or amend a Planned Unit Development or Protective Overlay.~~

Section VI-G.9.

9. Administrative Permits. The Planning Director, with the concurrence of the Zoning Administrator, shall have the authority to approve, approve with conditions or modifications, or deny applications for a ~~Wireless Communication Facilities~~ Facility pursuant to Sec. III-D.6.g. The Planning Director's decision on such an application may be appealed by filing an application for a Conditional Use.

Section VI-H.5.

5. Administrative Permits. The Zoning Administrator shall have the authority to review and recommend to the Planning Director approval, approval with conditions or modifications, or denial of applications for ~~wireless communication facilities~~ a Wireless Communication Facility pursuant to Sec. III-D.6.g. An Administrative ~~permits~~ Permit for a ~~Wireless Communication Facilities~~ Facility may be granted by the Planning Director only with the concurrence of the Zoning Administrator.

BYLAWS OF
WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

ARTICLE I

PURPOSE AND ORGANIZATION

SECTION 1. The purpose of the Wichita-Sedgwick County Metropolitan Area Planning Commission shall be those set forth in the Joint Ordinance-Resolution of the two Governing Bodies, and as set forth as Section 2.12.380 of the Code of the City of Wichita, and an agreement dated June 26, 1973, and an addendum dated July 10, 1974, as extended by supplemental agreements dated February 3, 1982, August 4, 1982, July 19, 1983, September 11, 1984, December 29, 1988, and October 9, 1991, between the County of Sedgwick and the City of Wichita, and those powers and duties delegated to the Planning Commission by K.S.A. 12-745.

ARTICLE II

POWERS AND DUTIES OF THE COMMISSION

SECTION 1. Powers. That said Commission, as herein specified, shall be vested with the following powers and authority, to-wit:

To cause to be prepared plans for the Sedgwick County area and such other area as may be of direct influence on Sedgwick County; to hold public hearings as provided by law; to act as a reviewing body for applications submitted to the State and Federal governments when required or permitted; to make and recommend policy to the Governing Bodies in areas of physical, economic and social growth; to adopt such regulations and rules as may by law be provided, such as subdivision regulations; to recommend on zoning matters; and to recommend on and provide plans for such other matters as may be of interest to the public and Governing Bodies.

SECTION 2. Actions. In all formal matters, said Commission shall act by motion, unless a resolution is required by law or governmental regulations. All notices required by law to be given by publication shall be published in the official City or County paper as may be appropriate.

SECTION 3. Oath. Before entering upon the duties of the office, the members of said Commission shall subscribe to an oath of office, if required by the Governing Body appointing them.

SECTION 4. Seal. The Commission shall maintain a seal, and the same have the word "Seal" in the center thereof, and the words "Wichita-Sedgwick County Metropolitan Area Planning Commission Kansas," in or around the outer circle.

ARTICLE III

MEETINGS OF THE COMMISSION

SECTION 1. Regular Meetings. Regular meetings of the Commission generally shall be held on the Thursdays of the 2nd and 4th full weeks of each month, in accordance with a schedule of meeting dates approved by the Commission each year. When the date of a regular meeting comes on a legal holiday, the Planning Commission may designate another date for the next regular meeting. Unless otherwise publicly announced by the Chairman, all meetings shall be held in the ~~10th floor~~Metropolitan Area Planning Commission Conference-Meeting Room, 10th-2nd floor, City HallThe Ronald Reagan Building, 455 North Main271 West Third Street, Wichita, Kansas, beginning at 1:30 p.m., provided the Commission may adopt another hour, date and place of holding its meeting by majority vote. Any such change shall be given wide publicity for the convenience of persons having business before the Commission.

SECTION 2. The Secretary or other authorized officer shall prepare an agenda of all matters to come before the Commission and mail the same to the Commission members no later than the Monday preceding the next regular meeting. A copy of the agenda shall also be furnished to the governing bodies, their managers, and the news media. Any member of the Commission may cause matters to be placed on the agenda by advising the Secretary no later than 12 o'clock noon on the Friday preceding the next regular meeting. Off agenda items may be considered with the approval of a majority of the members present.

SECTION 3. Special Meetings. Special meetings may be called by the Chairman for whatever time and purpose the Chairman deems necessary or upon written request of any five members of the Planning Commission. In the event a special meeting is called, notice as to time, date, place and reason for the meeting shall be given to all the members, the City Manager of the City of Wichita, the Chairman of the Sedgwick County Commission, and the media, at least 24 hours before the meeting. Announcement of a special meeting at a regular meeting shall constitute notice to those members present. Members not present, the City Manager of the City of Wichita and the Chairman of the Sedgwick County Commission shall be notified by the Secretary.

No matters other than those enumerated in the notice shall be considered at a special meeting.

SECTION 4. Open Meetings. All meetings of the Planning Commission and its Committees shall be open to the public and to attendance by representatives of the news media.

SECTION 5. Recording of Minutes. The Planning Commission shall cause the Secretary to keep and maintain complete records of all matters coming before the Commission. The Secretary shall also prepare and maintain permanent minutes to be kept in a binder available for public view and use during normal business hours. Permanent copies of minutes shall not be removed from the Office of the Secretary of the Planning Commission except by order of the courts.

Copies of the minutes of the Commission shall be furnished to all persons or bodies making request for same to the Secretary. The Secretary may make such charges as are necessary to recover the cost of making such copies.

SECTION 6. Quorum. A quorum of the Commission shall be required to conduct official business. A quorum shall consist of a majority of the members of the Commission appointed and qualified at any given time; provided however, a commissioner who has submitted his/her resignation in writing to the appropriate governing body, or the Chairman, Vice-Chairman or Secretary of the Commission, shall not be counted for purposes of the quorum. The affirmative vote of a majority of those members present and voting shall be sufficient for the passage of all motions; except that the adoption of or amendments to the Comprehensive Plan, the Unified Zoning Code text, and the Subdivision Regulations shall require a majority of all members. In the absence of a quorum at any meeting, the presiding officer may adjourn the meeting to a specific time, date and place, which shall be publicly announced. (Revised June 20, 2013)

SECTION 7. Recessed Meetings. Should the business before the Planning Commission not be completed, the Chairman may recess the meeting to a specific time, date and place until the matters on the original agenda are acted on.

SECTION 8. Conduct of Meetings. The Chairman shall preside at all meetings of the Planning Commission, except in his/her absence, disability or vacancy, the Vice Chairman shall preside. In the absence, disability or vacancies of both the Chairman and Vice Chairman, the Secretary shall preside to elect an Acting Chairman.

SECTION 9. Parliamentary Procedure. All meetings of the Commission and of its committees shall be conducted in accordance with Robert's Rules of Order, Newly Revised Edition 1970, except insofar as modified by these bylaws and procedures adopted by the Commission.

- a. The Planning Commission may suspend the rules, provided that the motion to suspend the rules take precedence over other prime motions; provided a motion to suspend the rules shall state the specific purpose and rule to be suspended; provided that no motion to suspend the rules shall be considered approved unless the length of time suspension will be in effect has been specified; provided that the motion to suspend the rules

shall be approved by a majority of the members present; and provided that no suspension of the rules shall be considered permanent.

- b. Presentations by the applicant and his/her representative(s) on zoning, subdivision, and vacation items shall be limited to ten minutes at the beginning of the hearing on that item, plus an additional two minutes for rebuttal at the end of the hearing. Presentations by other members of the audience shall be limited to ~~five~~three minutes. The time for presentations may be extended by the Commission by a majority vote of the members present. Prerecorded audio-visual presentations shall be included in the time limit of each speaker. All written and visual materials (or copies) used as part of a presentation to the Commission at the hearing shall be retained by the Secretary as part of the official record for that item. Debate from the floor (audience) on any matter may be limited at the discretion of the presiding officer when in his/her opinion such debate is repetitious, contains statements impinging the character, integrity or actions of the Planning Commission or any Commissioner without support of such allegations, or when the course of business due to the number of matters to be considered and/or number of people requesting to be heard will not permit further debate. Each member of the commission may speak to an issue as many times as may be desired.

- c. Any member remaining silent on a vote shall be considered to have voted in the affirmative. The Chair shall grant permission upon request for any member to refrain from participating in the discussion and voting on an item when said member advises the Chair of matters arising under the provisions of Section 10.b pertaining to that item. Such member shall be recorded as abstaining on the vote but shall be counted for the purposes of determining a quorum.

SECTION 10. Conflict of Interest and Ethical Considerations.

- a. Members shall not assist or represent applicants on zoning, subdivision, or vacation applications in the presence of the Commission. Members may appear and speak before the Commission under the provisions of subsection b. where the member owns property or is a prospective purchaser of property included in an application or the member owns property in the statutory notification area of an application.
- b. A member shall not participate or vote on an issue before the Commission if:
 1. the member has a substantial interest on a particular issue as defined by state law;
 2. the member has expressed an individual opinion on the determination of a quasi-judicial matter or otherwise expressed himself or herself in a way that infers an opinion has been formed prior to the Commission's hearing on the matter;
 3. the member owns property or is a prospective purchaser of property included in any application, or
 4. the member owns property in the statutory notification area.
- c. Members shall not make presentations to either governing body on a quasi-judicial item prior to the resolution of that item by the governing body, unless the member has abstained from participation on that item or the member has been designated by the Commission to make a presentation.
- d. Prior to any motion on an application, Commissioners shall disclose the nature of any ex parte contacts and of any information obtained through those contacts that may have a bearing on their decisions.

ARTICLE IV

ORGANIZATION

SECTION 1. Officers. Officers of the Planning Commission shall be the Chairman, Vice Chairman, and Secretary. The Chairman and Vice-Chairman shall be elected at the first meeting in September and shall serve for a term of one year. The Chairman and Vice Chairman shall be members of the Planning Commission. The

Secretary shall be the Director of the Metropolitan Area Planning Department or his/her designee.

The Chairman shall not succeed himself or herself the following year.

The Chairman shall conduct all meetings and business, sign resolutions, subdivision plats, and other official papers and documents.

The Vice Chairman shall act in the manner and capacity as the Chairman in the absence of the Chairman.

The Secretary shall conduct all the business for the Planning Commission as directed and set forth by these bylaws. The Secretary is hereby designated to act as the "responsible agent" for the Planning Commission in handling all Federal, State and local contracts and agreements. The Secretary or a designated appointee shall present Commission actions and recommendations to the governing bodies. The Secretary of the Commission shall, when required by law, authenticate by the seal of the Commission and the signature of the Secretary, the signature of the Chairman.

SECTION 2. Committees (Standing). The Chairman shall, within 30 days of his/her election, appoint from the Planning Commission membership the following committees for a one year term:

SUBDIVISION COMMITTEE. Shall be comprised of six members, three from among the City-appointed members and three from among the County-appointed members, and shall recommend action to the Planning Commission on all matters coming before it for final recommendation (administration of the Subdivision Rules and Regulations; changes thereto; establishing street names; review of vacations, dedications, access control issues and other direct land development issues relating to form and infrastructure) and to approve preliminary plats and authorize preparation of final plats.

ADVANCE PLANS COMMITTEE. Shall be comprised of six members, three from among the City-appointed members and three from among the County-appointed members, plus the Vice Chairman and shall provide guidance to staff in developing, formulating and considering projections, forecasts, goals and objectives, proposals, plans and policies that affect the long term physical, social and economic character of the planning area.

QUAD-COUNTY PLANNING FORUM - Shall be comprised of one member who is recommended by the chairman and appointed by the Sedgwick County Board of Commissioners. That member shall meet quarterly with elected officials representing Sedgwick, Harvey, Butler and Reno Counties to discuss planning and legislative issues of common interest.

SECTION 3. Committees (ad hoc). The Chairman with the consent of the Planning Commission, may appoint ad hoc committees as may be needed to assist in the business of the Planning Commission. The membership of such Committee(s) may include, or be all non-commission members. All such committees shall be provided a formal charge and shall report to the Commission its findings and recommendations, unless otherwise directed.

SECTION 4. Committees (general rules). The Chairman shall designate the Chairman for each committee appointed. The Chair shall appoint at least one member to each committee who has not served on the same committee the previous year. No Committee Chairman shall succeed themselves the following year. Any member present shall constitute a quorum and may conduct such business when that committee's action and recommendations are submitted to the Commission. Agendas for committee meetings shall be furnished to all members of the Metropolitan Area Planning Commission and media. Support material shall be furnished only to committee members unless specifically requested by other Commission members. Any Metropolitan Area Planning Commission member may sit with the other committee members, but only appointed committee members may vote.

ARTICLE V

AMENDMENTS TO BYLAWS

SECTION 1. The Commission may, by a two-thirds majority vote thereof, amend these bylaws or any provisions or sections thereof at any time when the same is not in conflict or in contravention of any of the laws of the State of Kansas or ordinances applicable thereto. Provided, however, that notices of the proposed amendments be furnished by the Secretary to the Commission members not less than five (5) days prior to the meeting at which said amendments are to be considered. A copy of the bylaws will be filed with the Office of the City Clerk of the City of Wichita and the Chairman of the Board of the County Commissioners.

The above and foregoing bylaws are hereby adopted as the bylaws of the Wichita-Sedgwick County Metropolitan Area Planning Commission.

Dated this 29th day of September, 2016

Chair, Carol Chapman Neugent

ATTEST:

Secretary, Dale Miller