

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

MINUTES

September 29, 2016

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 29, 2016 at 1:30 p.m., in the Planning Commission Conference Room, 2nd Floor, Suite #203, 271 West Third Street, Wichita, Kansas. The following members were present: Carol Neugent, Chair; John Dailey; Bob Dool; Bill Ellison; David Foster; Mike Greene; Joe Johnson; John McKay Jr. (Out @3:00 p.m.); Debra Miller Stevens; Lowell Richardson; John Todd and Chuck Warren. Members absent were: Matt Goolsby and Bill Ramsey. Staff members present were: Dale Miller, Director; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney; Jon Von Achen, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. Approval of the July 21, 2016 Planning Commission Minutes.

MOTION: To approve the July 21, 2016 Planning Commission minutes.

MCKAY moved, **RICHARDSON** seconded the motion, and it carried (11-0-1).
WARREN– Abstained

Approval of the August 4, 2016 Planning Commission Minutes.

MOTION: To approve the August 4, 2016 Planning Commission minutes.

WARREN moved, **TODD** seconded the motion, and it carried (9-0-3). **DOOL**,
MCKAY, RICHARDSON – Abstained.

CHAIR NEUGENT announced that Item #9 – Bylaws Amendments would be taken up out of order on the agenda.

BYLAWS AMENDMENTS

SCOTT KNEBEL, Planning Staff noted the two changes being the meeting location on page two and presentation time for the public from five minutes to three minutes with the Commission retaining the ability to extend the time by vote on page four.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **GREENE** seconded the motion, and it carried (12-0).

ELECTIONS

CHAIR NEUGENT thanked Mr. Dennis for being such a good Vice Chair; Mr. Goolsby for reminding her of Roberts Rules of Order and Mr. Dailey for teaching her patience.

MCKAY congratulated **NEUGENT** on the job she has done as Chair.

There was brief discussion on whether the Chair needed to be a City appointee, since **NEUGENT** was a County appointee. Staff indicated they could not find that provision in the Bylaws.

MCKAY indicated that alternating from City appointee to County appointee is how the Chair has been elected over the years.

MOTION: To amend the Bylaws to state that the Chair alternate from City to County appointee.

MCKAY moved, **DOOL** seconded the motion, and it carried (12-0).

CHAIR

RICHARDSON nominated **DAVID FOSTER**. **JOHNSON** seconded the nomination and it carried unanimously (12-0).

FOSTER in the Chair.

VICE CHAIR

MCKAY nominated **JOE JOHNSON**. **GREENE** seconded the nomination and it carried (11-0-1). **JOHNSON** abstained.

2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

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

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.
- 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 plat'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 plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- 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.)
- 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).

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

RICHARDSON moved, **JOHNSON** seconded the motion, and it carried (12-0).

3. **PUBLIC HEARING – VACATION ITEMS**

- 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.

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

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.

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

MCKAY moved, GREENE seconded the motion, and it carried (12-0).

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- 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.

APPLICANT/OWNER: Sycamore Village Homowners 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.

The applicant requests 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 provide 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 proceeding 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 provide 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 proceeding 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.

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

MCKAY moved, **GREENE** seconded the motion, and it carried (12-0).

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.

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

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 Homeowners 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 11feet 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 Homeowners 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 11feet 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.

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

MCKAY moved, GREENE seconded the motion, and it carried (12-0).

PUBLIC HEARINGS

4. **Case No.: ZON2016-00037 and CUP2016-00028** - DMD, LLC (Marlin Penner)/Baughman Company, PA, (Russ Ewy) request a 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 described as:

All of Lots 1 and 2, Block A, Highland Springs Commercial Addition, Wichita, Sedgwick County, Kansas, TOGETHER with Lot 2, Block B, in said Highland Springs Commercial Addition, except that part of Lot 2 in said Block B conveyed to the City of Wichita in the Kansas Warranty Deed recorded in DOC.#/FLM-PG:29317276, TOGETHER with that part of Reserve "A" as platted in said Highland Springs Commercial Addition described as follows: Beginning at the most easterly corner common to Lot 2 in said Block A and said Reserve "A"; thence S89°53'12"W along the lot line common to Lot 2 in said Block A and said Reserve "A", 236.70 feet to a deflection corner in said common lot line; thence S00°06'48"E, 30.00 feet to a point on the south line of said Reserve "A", said point being 30.00 feet east of the most southerly southwest corner of said Reserve "A"; thence N89°53'12"E along the south line of said Reserve "A", 236.70 feet to the southeast corner of said Reserve "A"; thence N00°06'48"W along the east line of said Reserve "A", 30.00 feet to the point of beginning, and TOGETHER with that part of Central Ave. as dedicated in said Highland Springs Commercial Addition lying east of and abutting the following described line: Beginning at the northwest corner of Lot 1 in said

Block A; thence N00°12'25"W, 148.93 feet to the southwest corner of Lot 2 in said Block B, and for a point of termination, and lying west of and abutting the following described line: Beginning at the northeast corner of Lot 1 in said Block A; thence N00°06'48"W, 150.00 feet to the southeast corner of Lot 2 in said Block B, and for a point of termination.

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, and 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 taller than 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 nightclub. 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 within 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.

KATHY MORGAN, Planning Staff presented the Staff Report.

The Planning Commissioners indicated that each of them had received ex-parte communication on the item through e-mails and U.S. Mail.

RICHARDSON asked when zoning was put into place didn't all section line roads come in with commercial zoning.

DIRECTOR MILLER said in 1958 certain intersections and section line roads outside the City limits were zoned commercial but there has never been a blanket zoning.

TODD asked staff to explain the bridges and drainage at Central Avenue and 135 Streets.

MORGAN said the bridges were located at 135th and Central Avenue. She added that any drainage issues associated with the CUP will be addressed by the drainage plan at the time of platting.

RUSS EWY, BAUGHMAN COMPANY, PA, 315 ELLIS, AGENT FOR THE APPLICANT commented this is part of a commercial addition that was platted at the same time as the Highland Springs Addition. He said most of the drainage on the site drains either southwest before going to the west and ultimately to a detention pond and drains to the north and back to the east. He stated that there have been four meetings with the neighborhood (which is outside the normal process) and two District Advisory Board meetings regarding the proposal. He said drainage was a primary concern to residents at each of those meetings. He said since the development was already planned for, there is a drainage plan on file with the City that was approved some 20 years ago; however, he said they will revisit all of the drainage issues when they file for the replat of the area.

EWY referred to a handout which were "Revised General Provisions" as a result of a meeting with about 50 residents at Auburn Hills Golf Course on August 25, 2016. He gave a brief overview of that meeting stating that they fielded a variety of questions about the proposal and the process. He said they took feedback from the meeting and tried to concentrate all issues down to a handful of concerns. He said the text highlighted in orange represents the applicant's final negotiated restrictions on the property. He said the applicant offered to limit the uses to the NO district; GO on what will ultimately become Parcel 4 further limited to uses in the NO district with the exception of ancillary parking; with the two lots to the north zoned LC with an increase in the height of the screening wall to eight feet to the south where it affects residential property. He mentioned that the existing CUP already has one and one half times the landscape requirement for buffers and street trees. In addition, he said they would limit times of trash pickup on Parcel 4 from 6:00 a.m. – 10:00 p.m. He concluded by stating that there were a number of people present to speak. He added that he appreciated the neighbor's willingness to meet for negotiations. He said at the end of the day the parties were not able to come to an agreement on use restrictions on Parcel 3. He offered to answer any questions.

MCKAY asked the agent to explain the difference in the handout map provided at this meeting and what was provided with the Staff Report.

EWY gave a brief background of the zoning case on the parcels back in 1998 that was quite contentious. He said at that time the City Council voted 5-2 to approve the zone changes as they are today; however, there were sufficient protests to require a “super majority” or six votes to approve the application so the City Council action failed. He said the applicant appealed to the District Court and the Council decision was overturned and the CUP zoning was established. He said subsequently Central Avenue was realigned. He said as a result they feel that a lot of the conditions that predicated the single-family residential and office zoning along Central Avenue are no longer in existence now. He said the handout map reflects the concept of how the property will look after the replat, with just those three parcels and vacation of the Central Avenue right of way; and reparcel 1, 5 and 6. He said those are the three steps that are somewhat unique to this application.

RICHARDSON clarified that all the homes built in Highland Springs were after this zoning was in place.

EWY said that was correct.

FOSTER asked for clarification of the proposed commercial zoning.

EWY stated that the original application asked for LC zoning on the entire CUP; however, after negotiations at the neighborhood meetings and in an effort to reach some kind of compromise, they are proposing limiting the LC zoning to Parcels 2 and 3 and requesting GO on Parcel 4 with further restrictions to NO uses and development standards. He said the existing CUP from 1998 already limits the building size to 8,000 square feet. He said Parcel 1 is outside of the application area and is currently zoned LC.

RICHARDSON noted a reduction in the size of Parcel 4.

DIRECTOR MILLER clarified that the UZC required that the CUP lots match the plat.

JOHNSON asked what was presently planned for Parcels 2 and 3.

EWY replied that right now nothing specific is planned on any of this development.

RICHARDSON clarified that the pond located to the southwest was part of the original drainage plan for the area.

EWY replied yes, and said that drainage requirements in the area have changed over time so they are anticipating changes to the drainage plan and perhaps some water retention on their property.

NEUGENT asked since the public was under the impression they would have five minutes each, can the Commission do a blanket motion to allow each speaker five minutes.

MOTION: To give each speaker five minutes.

NEUGENT moved, **JOHNSON** seconded the motion, and it carried (12-0).

LORI MARCEAU, 431 N. 135TH ST., WEST said her home for the last 28 years is just south of the application area. She said the neighborhood understands and accepts that there will be some level of commercial development on the southwest corner of Central Avenue and 135th Street West. However, it is important to the neighborhood that the commercial development not have an adverse effect on the existing single family homes in close proximity.

MARCEAU brought up the following issues of concern: wall height; trash dumpster locations and collection times; landscaping, signage; hours of operation; types of businesses; odors and noises; LC zoning adjacent to SF-5 residential zoning and the fact that this proposal, if approved will open the door for a wider variety of commercial development in close proximity to established residential homes. She gave a brief history of the CUP case filed in 1998 which the applicant/owner appealed to the District Court in 1999. She said when the denial was overturned, Parcels 1, 5 and 6 were zoned LC; Parcels 2 and 3 were zoned GO; and Parcel 4 remained SF-5.

MARCEAU said since that time those who filed protest petitions were never notified of the appeal made to the District court, the reversal of the case and were surprised to learn that Parcels 1, 5 and 6 had been zoned LC. She said the last the neighbors knew the matter failed to pass at the City Council due to a lack of a super majority vote. She said the property was subsequently sold to a new owner. She said the area has remained undeveloped and a for sale sign has been on the property for many years.

MARCEAU briefly reviewed the current rezoning application noting that the process was delayed because the property owner closest to the application area (her) was not notified as required by law.

MOTION: To give the speaker one additional minute.

WARREN moved, **GREENE** seconded the motion, and it carried (12-0).

MARCEAU mentioned the various meetings with neighbors and the property owner's representative and the concerns expressed by the neighborhood including the close proximity of single family residences, traffic flow in/out of the LC development, lighting, types of businesses, hours of operation, etc. and the fact that the property owner has no specific plans for the type of businesses that will be part of the development.

CHRIS LATHAM, 605 N. FORESTVIEW COURT, AT LARGE BOARD MEMBER, RAINBOW LAKES WEST 4TH ADDITION referred to a picture of the view from his back deck looking west at Parcel 3 of the development.

LATHAM reviewed the Golden Rules as follows: 1 – The zoning, uses and character of the neighborhood. He said the property on three sides of the commercial development area is zoned SF-5; the age of houses to the west, south and east; currently there was no commercial development at this corner. 2 – The suitability of the subject property for the uses to which it has been restricted. All parcels are undeveloped; Parcel 4 is currently being used to store dirt from the 135th Street road

development; Staff Report says the site could continue to be economically viable as currently zoned. 3 – Extent to which removal of the restrictions will detrimentally affect nearby property. Residential housing in close proximity on three sides, GO or NO zoning would be more appropriate next to SF-5 zoning as buffering. 4 – Length of time subject property has remained vacant as zoned. The property has never been developed possibly because of the economy.

FOSTER referred to the diagram of Parcel 4 and the buffer to the south.

LATHAM said in his perspective there are four sides to this story – the developers side, Ms. Marceau’s side; people to the east of the property in Rainbow Lakes and the people who live in Highland Springs. He said all of them have different things on their agenda. He said Parcel 3 being zoned GO is the most significant from his perspective because it is right outside his back door.

WARREN asked what types of businesses they don’t want.

LATHAM said 24 hour convenience store; drive thru restaurant and garage repair that would create ancillary noise.

BOB LAMBERGER, 13738 WEST HARDTNER COURT continued reviewing the Golden Rules 5 – Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant – commercial development is possible as currently zoned; use of NO and GO zoning would not deter development. 6 – Conformance of the requested change to the adopted or recognized Comprehensive Plan – Staff Report indicates site is appropriate for new employment and growth uses; Report states convenience retail centers likely will be developed in proximity to existing residential uses not immediately next to residential zoning. 7 – Impact of the proposed development on community facilities. Central Avenue west of 135th and 135th street north of Central Avenue is unimproved; questionable if widened 135th Street can accommodate traffic from commercial development; access in/out of the application area is uncertain; and close proximity of Jennie Street to Central Avenue poses traffic flow problems in/or out of the application area. 8 – Opposition or support of neighborhood residents. The surrounding neighborhoods (Rainbow Lakes, Highland Springs and individual property owners) are opposed to increasing LC zoning at this corner, current level of commercial zoning is appropriate for development, not one homeowner expressed support for increasing LC zoning at this corner at any of the meetings held. 9 – Recommendation of professional staff. Staff Report does not detail history surrounding the zoning; recommendation by staff does not take into consideration the numerous issues detailed in this presentation; select neighbors wish to work with the owner/applicant to develop a compromise to the zoning of Parcels 3 and 4 and the general provision of the CUP. He concluded by stating that the neighborhood recommendation was as follows: Parcel 2 currently zoned GO – to LC zoning; Parcel 3 currently zoned GO – to remain GO; Parcel 4 currently zoned SF-5 – to NO zoning. They also request that fencing be either an eight foot cement wall or a six foot wall on top of a two foot berm around the entire CUP area and that trash collection be limited to the hours of 6:00 a.m. to 10:00 p.m.

DAVID DENNIS, 615 N. RAINBOW LAKE ROAD, PRESIDENT, RAINBOW LAKES WEST HOMEOWNERS ASSOCIATION said there are residents from three different HOA's which were Rainbow Lake West; Rainbow Lakes West 4th Addition; and Highland Springs. He said each group has their own concerns about the proposal. He said the homeowners are not opposed to development as long as the development meets the needs of the neighborhood.

DENNIS said the neighbors thought they had an agreement worked out after the meeting at Fire Station 21; however, the next day they received an e-mail with the current proposal provided to the Commission as a handout. He referred to the last slide of the neighbor's proposal. He asked since the agent is amending certain portions of the original CUP shouldn't the entire CUP come under review. He touched on the fact that the surrounding property owners did not know of the District Court decision until they started to research the current proposal. He mentioned a higher fence and limits on trash collection times. He said the owner to the south is looking for less intensive zoning in that area and Mr. Latham does not want to see LC right outside his back deck. He said NO and GO is used to buffer LC from residential development but this is proposing LC right next to homes. He concluded by congratulating David Foster and Joe Johnson on their election.

RAY PRIEKSDAD, 14342 W. HARDTNER COURT, TREASURER - HIGHLAND SPRINGS HOMEOWNERS ASSOCIATION commented that the parcels adjacent to residential should be GO or NO to act as a buffer. He said he supports the idea that the development will be a good neighbor to the residences that are already there and established. He commented that none of the homes in Highland Springs were there in 1999 when this zoning took place. He said Highland Springs contains 290 residents. He said some of those residences are within 100 feet of the development. He said they recognize that development is coming and they welcome the right kind of development that will be a good neighbor to those that already live in the community.

ELLISON asked Mr. Prieksdad what type of development he would like to see.

PRIEKSDAD mentioned that they don't want to see businesses that produce noise or have late hours. He said they would like to see office businesses and some type of LC businesses that would fit into an 8-5 timeframe that don't adversely impact the existing residential neighbors. He said they are also interested in some type of buffer wall on the south, southwest and west areas of the development.

ANNE KRUEGER, 518 N. FORESTVIEW COURT, PRESIDENT, RAINBOW LAKES HOMEOWNERS ASSOCIATION said the City just completed a major landscaping job and planted trees in the median along 135th Street. She said she is concerned about the level of traffic that a major commercial development will bring along 135th Street which is heavily travelled now and will eventually lead to an on-ramp to Kellogg. She also asked about the other part of this corner. She said the neighbors are not "no growth" but they want to limit the traffic in their neighborhood.

EWY clarified there would be no left turn function and it would be right in/right out only access onto 135th Street which was a known factor coming into the project. He said that will have a limited impact on the neighbors to the east. He said the major access will be off of Central Avenue with ancillary access off of 135th Street. He said there was discussion about platting, access controls and the possibility of getting a curb cut at the second meeting but he said the curb cut was a practical impossibility. He commented that a number of options and items were discussed at that meeting.

MOTION: To give the speaker an additional minute.

RICHARDSON moved, **GREENE** seconded the motion, and it carried (12-0).

EWY referred to the list of neighborhood concerns and commented that they have been able to address a certain number of them including trash pickup, location of dumpsters, and concessions on buffering on Parcel 4. He said the original CUP provides protections to adjacent homeowners in Highland Springs that were there when they purchased their home. He said they are not volunteering additional restrictions or lessening of any of the other pre-existing CUP conditions outside this application area.

RICHARDSON asked about the wall on Parcel 1. He clarified that there was already a requirement for a 6 foot wall on the entire south and west sides of the CUP.

EWY said currently there is a requirement for a 6-foot concrete masonry wall on the outer edge of a 30-foot landscaped buffer that is one and one half times the landscape requirement on the east edge of the CUP and a 6 foot masonry wall on the entire south and west sides of the CUP.

RICHARDSON asked if they would be willing to restrict trash pickup on Parcel 1.

EWY replied no.

GREENE referred to General Provision #19 of the current CUP with relation to businesses not allowed in the CUP including restaurants with drive thru windows, convenience stores, service stations and vehicle repair not being permitted within 200 feet of residential uses. He mentioned Mr. Latham's concerns about Parcel 3 and said it looks like those concerns are covered if he is reading the CUP correctly.

EWY said that provision restricts overhead doors associated with vehicle repair and no restaurants to que facing to the east so that eliminates drive thru restaurants. He said he believes the neighbors first choice was to keep Parcel 3 zoned GO. He said the client declined to eliminate convenience stores, service stations and vehicle repair. He added that the DAB voted to approve the request 7-0 based on the Revised General Provisions included in the handout.

There was discussion concerning what the neighborhood wanted and what the applicant agreed to and the discussions at various neighborhood meetings.

EWY briefly summarized the various meetings and levels of compromise at each meeting. He said the applicant could not give the neighbors the entire compromise they wanted but they did feel they have compromised on the most critical elements that were not zoning Parcel 4 to LC but downzoning it so for all practical purposes it is NO. He apologized to the neighbors who felt they were misled and thought that had given them an iron clad promise, because he was in no position to do that without first checking with his client. He said they felt like they have worked with the neighbors in good faith.

NEUGENT asked what the applicant has agreed to that is on the neighbor's list.

EWY said increasing the height of the wall to 8 feet and limiting trash collection to between 6:00 a.m. – 10:00 p.m. He said the difficult issue to get around is when he speaks, he is talking about the 3 parcels on the application, but when the neighbors speak, they are talking about the entire CUP. He said the applicant is not going outside the bounds of the amendment application that they have applied for and are present to talk about. He said they were not willing to volunteer restrictions outside of this application area that do have an economic impact on the client. He said the zoning pattern in this area is based on a condition that no longer exists. He said two of the parcels were zoned GO because they were located on arterial intersection pad sites.

MCKAY (Out @3:00 p.m.)

WARREN asked if the applicant could reverse the dimensions on Parcel 2 and 3. He said make Parcel 2 – 271 feet and Parcel 3 – 244 feet and give both of those LC zoning but restrict Parcel 3 to eliminate certain types of businesses which were: 24 hour convenience store, garage and drive through businesses. He asked the agent if that was a compromise the client could agree to.

EWY responded that his client has authorized him to offer only the concessions the Commission has before them.

JOHNSON suggested that the agent take the proposed compromise back to his client and that the Planning Commission defer action on the item until the next Planning Commission Meeting.

MOTION: To close the public hearing and that the agent take the proposed compromise back to his client and that the Planning Commission defer action until the next meeting (October 6, 2016).

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

EWY clarified that he was to take the compromise proposed by Commissioner Warren back to his client and be prepared to respond at the October 6, 2016 Planning Commission Meeting.

DAILEY clarified that trash pickup times were only limited on Parcel 4.

EWY said that is correct. He said they felt Parcel 4 had the most impact on the residential development in the area.

JEFF VANZANDT, ASSISTANT CITY ATTORNEY said City Ordinance limits trash pick to between 6:00 a.m. and 8:00 p.m. so that would apply to all parcels.

EWY said he thought that ordinance applied to residential trash collection and that commercial and industrial trash collection was different.

ELLISON asked if the neighbors were happy with what is being proposed.

WARREN asked about a point of order and said the discussion needs to involve the motion. He asked staff it would be appropriate if the Commission just made a substitute motion to include the proposed compromise.

MILLER STEVENS said she believes the Commission has jumped off course and are making things up as they go along. She said that is not the plat that they are talking about. She said she would prefer that the motion address the current case and platting not parcels that do not currently exist.

CHAIR FOSTER said he believes they should give the applicant time to consider the compromise offered by Commissioner Warren relative to making this a workable piece of property.

MILLER STEVENS said she believes the motion is illegal because the parcels don't exist.

VANZANDT explained that the applicant will have to come back with a plat that matches the discussion.

The **ORIGINAL MOTION** to close the public hearing and defer the item one week so the agent can present the proposed compromise to his client for consideration, which was to make Parcel 2 – 271 feet and Parcel 3 – 244 feet and give both of those LC zoning but restrict Parcel 3 to eliminate certain types of businesses which were: 24 hour convenience store, garage and drive thru businesses carried (9-2).
ELLISON and **MILLER STEVENS** – No.

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5. **Case No.: CUP2016-00024** - Kellogg and Est LLC c/o Christian Ablah (owner/applicant), Kim Edgington (agent) request a City CUP major amendment to DP-332 to expand the CUP land area and amend signage regulations 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.

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 feet 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.

SCOTT KNEBEL, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **WARREN** seconded the motion, and it carried (12-0).

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6. **Case No.: CON2016-00042** - Jennifer Ethridge (owner/applicant) requests a City Conditional Use to permit Personal Improvement Service (massage therapy) on property zoned GO General Office described as:

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 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.
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.

KATHY MORGAN, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **WARREN** seconded the motion, and it carried (12-0).

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7. **Case No.: CON2016-00043** - Paul Jeffrey Prichard Trust (owner)/K.S. Miller Engineering (agent) request a City Conditional Use to permit Personal Improvement Service (massage therapy) on property zoned General Office described as:

Lots 32 and 33, Block 11, East Highlands, Sedgwick County, Kansas.

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 businesses 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 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.
6. Impact of the proposed development on community facilities: No additional community facilities demand will be created by allowing this request.

KATHY MORGAN, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **WARREN** seconded the motion, and it carried (12-0).

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8. **Case No.: DER2016-00002** - 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.

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 co location 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.

SCOTT KNEBEL, Planning Staff presented the Staff Report.

RICHARDSON asked what was the background on this issue and if this was an attempt to make the regulations consistent statewide.

KNEBEL responded that this is model legislation from a group called ALEC that is being pushed nationwide.

WARREN commented that issues such as “Not In My Back Yard” (NIMBY) have made it difficult to put in towers. He asked if this new legislation allowed towers to go anywhere even in a front yard.

KNEBEL said he didn’t agree with that statement. He said staff believes that the State Legislation allows municipalities to continue to designate permitted tower locations on properties.

ELLISON mentioned seeing “environmentally friendly” towers in Colorado that resembled Pine trees.

KNEBEL said the legislation does not restrict design aesthetics of a tower and the City’s plan does reference a “disguised” tower.

TODD clarified that approval of this proposal would bring the City into compliance with State Law.

KNEBEL replied that was correct.

CHAIR FOSTER commented that he believes this proposal ignores aesthetics and is industry driven. He asked staff about any “Home Rule” issues.

KNEBEL commented that discussion has occurred with the Law Department. He said there are provisions within the Statute that allow exercise of Home Rule that are limited to right of way and franchise agreements as opposed to the zoning code.

CHAIR FOSTER commented that the Commission doesn’t have much choice on this matter.

MOTION: To approve subject to staff recommendation.

WARREN moved, **TODD** seconded the motion, and it carried (10-1). **MILLER STEVENS** – No.

The Metropolitan Area Planning Commission adjourned at 3:26 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