

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

March 5, 2009

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 5, 2009, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Darrell Downing, Chair; G. Nelson Van Fleet, Vice Chair; Don Anderson; David Dennis; Shawn Farney; David Foster; Bud Hentzen; Hoyt Hillman; Bill Johnson (in @ 1:33 P.M.); Ronald Marnell (in @1:36 P.M.); John W. McKay, Jr.; M.S. Mitchell and Debra Miller Stevens. Don Sherman was absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Jess McNeely, Senior Planner; Bill Longnecker, Senior Planner; Derrick Slocum, Associate Planner and Maryann Crockett, Recording Secretary.

-
1. Approval of the prior MAPC meeting minutes: None

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**
Items may be taken in one motion unless there are questions or comments.

- 2-1. **SUB 2008-92: Final Plat -- NORTH FORTY-FIFTH PLACE ADDITION**, located on the south side of 45th Street North and the east side of Ridge Road.

NOTE: The western portion of this site is located in the County adjoining Wichita's city limits and annexation is required. The site has been approved for a zone change (ZON 2006-39) from SF-5 Single-family Residential and SF-20 Single-family Residential to LC Limited Commercial. The North Forty-Fifth Place Community Unit Plan (CUP 2006-38, DP-301) was also approved for this site.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed.
- B. Wichita Water Utilities Department requires the applicant extend water (transmission and distribution mains) and sewer (mains and laterals) to serve all lots being platted. In accordance with the CUP approval, no development shall occur until municipal water and sewer services are provided to the site.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. City and County Engineering have approved the applicant's drainage plan.
- E. County Engineering notes that a defined location is needed for the north half and south half of Lot 1 for a minimum building pad.
- F. In accordance with the CUP, the following transportation improvements are required:
 - a. A guarantee for construction of northbound accel/decel lanes on Ridge Road and center turn lanes to major entrances.

- b. A petition for future signalization of a major entrance on Ridge Road, to be installed when warranted by the Traffic Engineer.
- G. The plat proposes three access openings along Ridge Road and two access openings along 45th St. North. County/Traffic Engineering has approved the access controls subject to the south opening along Ridge Road being approved by KDOT. The east opening along 45th St. North should be located along the west 30 feet of the east 50 feet. The CUP was approved with only two openings along Ridge Road and an administrative adjustment is needed.
- H. The joint access opening shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- I. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- J. The wall easements shall be referenced in the plat^{or}'s text.
- K. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- L. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- M. The applicant has indicated that a blanket pipeline easement is in the process of being confined. If this easement, when confined, impacts this site, the easement shall be shown on the plat and shall be properly referenced. A recorded copy of the confinement of the easement shall be submitted.
- N. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- O. The plat^{or}'s text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the

control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

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

V. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

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

HILLMAN moved, **ANDERSON** seconded the motion, and it carried (11-0).

2-2. SUB 2009-14: One-Step Final Plat -- WICHITA REGIONAL FIRE TRAINING ADDITION, located on the on the northwest corner of 31st Street South and Oliver.

NOTE: This is a replat of the Robert E. Blevins Addition in addition to unplatted property to the west. A Conditional Use (CON 2008-68) for a Safety Service has been approved.

STAFF COMMENTS:

- A. City of Wichita Water Utilities Department has advised that water and sewer services are available to serve the site.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the drainage plan, subject to a letter from KTA approving the drainage plan.
- D. Traffic Engineering has approved the access controls. The plat proposes one access opening along both Oliver and 31st St. South.
- E. Complete access control is needed along the Kansas Turnpike.
- F. County Surveying advises that the section corners need monument size and type.
- G. The legal description needs to delete reference to the Den Addition. This plat file has been closed.
- H. The site is located within the Maximum Mission Area of the Air Installation Compatible Use Zone

(AICUZ) study to identify noise impact areas around McConnell Air Force Base. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.

- I. The plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. 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.)
- K. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 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.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water 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.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

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

HILLMAN moved, **ANDERSON** seconded the motion, and it carried (11-0).

JOHNSON (In @ 1:33 P.M.)

2-3. SUB 2009-15: One-Step Final Plat -- NORTH POINTE SENIOR LIVING ADDITION,
located south of 29th Street North and on the east side of Woodlawn.

NOTE: This is a replat of a portion of the Woodlawn North Pointe Addition. The plat will be revised to denote three lots.

STAFF COMMENTS:

- A. City of Wichita Water Utilities Department has required a guarantee for the relocation/ abandonment /installation of water (distribution mains) and sewer (laterals) for the plat. A recorded 10-foot private easement is needed for the existing sewer service line that serves the building at Lot 1, Block 1.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has requested the drainage plan be revised to include offsite channel improvements or provide onsite detention. Offsite drainage needs to be delineated.
- D. "Private street" as included in the description of uses for Reserve A should be revised to "private drive."
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- F. 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.
- G. The preliminary plat needs to show the names of adjacent owners.
- H. A cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- I. 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.
- J. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

CHAIRMAN DOWNING reported that the applicant has requested a two-week deferral.

MOTION: To defer the application two weeks to March 19, 2009.

MITCHELL moved, **HENTZEN** seconded the motion, and it carried (12-0).

3. PUBLIC HEARING – VACATION ITEMS

3-1. VAC2009-02: County request to vacate a drainage easement dedicated by separate instrument.

OWNER/APPLICANT: Robert L Kalbfleisch

AGENT: Robert W Kaplan

LEGAL DESCRIPTION: The 100-foot (x) 350-foot drainage easement dedicated by separate instrument, Film 0973/Page 0914, Sedgwick County, Kansas.

LOCATION: Generally located south of 63rd Street South and west of Hydraulic Avenue (BoCC #2, 3-mile ring).

REASON FOR REQUEST: Reconstruction of 63rd Street South

CURRENT ZONING: Subject property and abutting western properties are zoned RR Rural Residential ("RR"). Abutting southern and eastern and adjacent northern and eastern properties are zoned SF-5 Single-Family Residential ("SF-5") and GC General Commercial ("GC") and LC Limited Commercial ("LC").

The applicant is requesting consideration for the vacation of 100-foot (x) 350-foot drainage easement dedicated by separate instrument. The applicant proposes to replace the vacated drainage easement with another one that goes from his undeveloped tract to an undisclosed end. There is an abutting western tract that has a single-family residence built next to a sand pit. County Engineering and City Storm Water (3-mile ring consideration) need to approve the proposed replacement drainage easement and the applicant needs to confirm if the proposed replacement drainage easement remains on the applicant's tract or extends onto property not owned by the applicant. There appears to be no public water or sewer in the proposed vacated drainage easement. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the described drainage easement. Because the site is located in Sedgwick County, but within the City of Wichita's 3-mile ring subdivision jurisdiction, consideration and recommendation by the Wichita City Council and consideration and final action by the Sedgwick County Board of County Commissioners is required.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from County and City Public Works/Water/Sewer/Storm Water, 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 drainage easement dedicated by separate instrument.

- 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 February 12, 2009, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the described drainage easement dedicated by separate instrument will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Therefore, the vacation of the drainage easement dedicated by separate instrument described in the petition should be approved with conditions:

- (1) The County Engineer needs to approve a drainage plan and the proposed replacement drainage easement. City Storm Water needs to review and confirm with the County Engineer.
- (2) Provide Planning Staff with the approved original replacement drainage easement prior to the vacation case going to the WCCC and BoCC for consideration, recommendation and final action. The approved original replacement drainage easement will go with the Vacation Order to the Register of Deeds for recording.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated. Provided any needed guarantees for relocation of utilities.
- (4) All improvements shall be according to County Standards and at the applicants' expense. Provided any needed guarantees for drainage improvements.
- (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 Governing Body

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) The County Engineer needs to approve a drainage plan and the proposed replacement drainage easement. City Storm Water needs to review and confirm with the County Engineer.
- (2) Provide Planning Staff with the approved original replacement drainage easement prior to the vacation case going to the WCCC and BoCC for consideration, recommendation and final action. The approved original replacement drainage easement will go with the Vacation Order to the Register of Deeds for recording.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated. Provided any needed guarantees for relocation of utilities.
- (4) All improvements shall be according to County Standards and at the applicants’ expense. Provided any needed guarantees for drainage improvements.
- (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 Governing Body 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, **MILLER STEVENS** seconded the motion, and it carried (12-0).

3-2. VAC2009-03: City request to vacate multiple platted easements and a portion of platted complete access control.

- OWNER/APPLICANT:** USD 265, Goddard
- AGENT:** PEC, c/o Rob Hartman
- LEGAL DESCRIPTION:** Multiple platted easements and a portion of platted complete access control, all located on Lot 1, Block 1, Goddard School 2nd Addition, Wichita, Sedgwick County, Kansas: see attached exhibits.
- LOCATION:** Generally located north of Kellogg Street/US-54, on the east side 167th Street West (WCC #V)
- REASON FOR REQUEST:** Redesigned school campus/layout
- CURRENT ZONING:** The subject property and abutting northern, eastern and southern properties are zoned SF-5 Single-family Residential (“SF-5”). Abutting northern and eastern properties are zoned SF-20 Single-family Residential (“SF-20”). Adjacent (across 167th Street West) is in the City of Goddard.

The applicant proposes to vacate multiple platted easements and a portion of platted access control. The attached exhibit indicates almost every platted public easement will be entirely or partially vacated. The exhibit also shows proposed replacement easements, which will have to be dedicated by separate instrument. The exhibit also shows a proposed additional 25 feet of complete access control being vacated to create a 125-foot wide drive (currently has a 100-foot wide drive) located on the south end of the plat. There appears to be a sewer line and manholes in a portion of the north most platted easement; a new exhibit is required as there appears to be conflicts in the described vacated easements and the proposed replacement easements. There appears to be no water in any of the easements; water is available and will have to be extended to the site. There is a private pipeline easement running through the site that will not be disturbed by the proposed vacations. Comments from franchised utilities and Storm Water have not been received and are needed to determine if they have utilities located within the described platted easements. The Goddard School 2nd Addition was recorded with the Register of Deeds September 26, 2008.

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/Storm Water, 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 multiple platted easements and portion of platted complete access control.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time February 12, 2009, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the described platted multiple easements and a portion of platted complete access control will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Therefore, the vacation of the multiple platted easements and a portion of platted complete access control described in the petition should be approved with conditions:

- (1) Provide Staff with all required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds. Provide exhibits that show: (a) The location, size and configuration of the approved replacement easements, as dedicated by separate instrument. This will be provided prior to the vacation request going to City Council for final action and will be recorded with the Vacation Order and dedications, and (b) The location, size and configuration of the approved replacement easements, as dedicated by separate instrument, and their film and page number as recorded by the Register of Deeds. Exhibit (b) will be provided after the replacement easements and Vacation Order are recorded with the Register of Deeds. A copy will be placed in the Vacation case file and the Subdivision file for the Goddard School 2nd Addition.
- (2) Provide Planning staff with the legal description of each of the vacated easements and the vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Petition and the Vacation Order.

- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated. Provided any needed guarantees for relocation of public sewer and for the extension of public water.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Staff with all required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds. Provide exhibits that show: (a) The location, size and configuration of the approved replacement easements, as dedicated by separate instrument. This will be provided prior to the vacation request going to City Council for final action and will be recorded with the Vacation Order and dedications, and (b) The location, size and configuration of the approved replacement easements, as dedicated by separate instrument, and their film and page number as recorded by the Register of Deeds. Exhibit (b) will be provided after the replacement easements and Vacation Order are recorded with the Register of Deeds. A copy will be placed in the Vacation case file and the Subdivision file for the Goddard School 2nd Addition.
- (2) Provide Planning staff with the legal description of each of the vacated easements and the vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Petition and the Vacation Order.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated. Provided any needed guarantees for relocation of public sewer and for the extension of public water.
- (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, **MILLER STEVENS** seconded the motion, and it carried (12-0).

PUBLIC HEARINGS

4. **Case No.: ZON2009-05 and CON2009-04** - Dennis Niedens (Applicant) Request City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential and City Conditional Use request for multifamily development within the TF-3 Two-family Residential zoning district on property described as:

A tract of land in the Southeast Quarter of Section 13, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning 760 feet East and 330 feet North of the Southwest corner of said Southeast Quarter; thence West 122.5 feet; thence North 330 feet; thence East 122.5 feet; thence South to beginning. Generally located north of W. Central Avenue and east of N. Mt. Carmel Avenue (2929 W. Elm).

BACKGROUND: The applicant requests TF-3 Two-family Residential (“TF-3”) zoning on a 0.84-acre site, currently zoned SF-5 Single-family Residential (“SF-5”). The site is currently undeveloped. The applicant also requests a Conditional Use for multiple duplexes on one lot; the applicant intends to develop four duplexes with eight total units (see the attached site plan). The property is 36,590 square feet, with 126 linear feet of frontage along West Elm Street.

Property north and west of the subject site is zoned SF-5 and is developed with single-family residences, while the property to the east is also zoned SF-5, but is currently undeveloped. Property south of the subject site is zoned LC Limited Commercial (“LC”) and is developed as a shopping center with frontage along Central Avenue.

CASE HISTORY: The application area is unplatted land located in the City of Wichita.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residence
SOUTH:	LC	Shopping center
EAST:	SF-5	Vacant
WEST:	SF-5	Single-family Residence

PUBLIC SERVICES: The streets nearest to the subject site are Mount Carmel and Elm Street, both of which are paved, local residential roads, with 60-foot right-of-ways. Neither street has recorded traffic counts. The closest major intersection to the subject site is Zoo Boulevard and Central Avenue, located approximately 800 feet southwest of the subject site. Both Zoo and Central are paved principal arterials, with traffic counts around 12,000 ADTs for Zoo Boulevard and approximately 31,000 for Central Avenue. A sewer line currently runs through the center of the site and the nearest water line terminates at the intersection Custer and Elm, less than 70 feet from the north property line of the subject site. This site is currently unplatted and will be required to be platted in order to be developed.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Wichita-Sedgwick County Comprehensive Plan identifies the application area as “Urban Residential.” The Urban Residential category encompasses all development densities found in the municipality. This category of use encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may be found in this category.

The Comprehensive Plan's "Residential Locational Guidelines" for medium and high density residential state that such uses should be: (1) transitional land uses between commercial and low density uses and may also serve to buffer low-density residential uses from commercial uses, (2) allocated to within walking distances of neighborhood commercial centers, parks, schools and public transportation routes while being in close proximity to concentrations of employment, major thoroughfares and utility trunk lines, (3) directly accessible to arterial or collector streets in order to avoid high traffic volumes in lower density residential neighborhoods, and (4) sited where they will not overload or create congestion in existing and planned facilities/utilities.

This request conforms to the goals and objectives of the residential land use category of the Wichita-Sedgwick County Comprehensive Plan. The goal for residential land use within the plan is to provide for rural, suburban, and urban residential areas, which provide for a variety of housing opportunities. The objective to the goal is to encourage residential redevelopment, infill and higher density residential development that maximizes the public investment in existing and planned facilities and services. One of the strategies used is the use of Community Unit Plans, Planned Development Districts and zoning as tools to promote mixed use development, higher density residential environments and appropriate buffering.

The Unified Zoning Code (UZC) permits multiple duplexes on one lot in TF-3 zoning with the approval of a Conditional Use. The UZC limits multiple dwellings on one lot in the TF-3 zone to 14.5 dwelling units per acre; this application is below that limit.

RECOMMENDATION: The immediate neighborhood is a mixture of single and multi-family development, with commercial uses to the south and therefore not out of character with the proposed duplexes. Likewise, the proposed zone change is in complete conformance with the Land Use Guide of the Comprehensive Plan. Under the current SF-5 zoning the application area could be developed with up to seven dwelling units, this zone change and conditional use request propose creating four duplexes with eight dwelling units.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be **APPROVED subject to the following conditions:**

- A. **APPROVE** the zone change (ZON2009-05) to TF-3 Two-family Residential ("TF-3"), subject to platting within one year.
- B. **APPROVE** the Conditional Use Request (CON2009-04), subject to the following conditions:
 1. The site shall be limited to four duplexes and eight total dwelling units.
 2. A revised site plan will need to be provided that will determine if the location of landscaping, parking, setbacks and any other detail.
 3. The site shall be developed in general conformance with the approved site plan.
 4. Development on the site shall conform to all applicable codes to include zoning, building, landscape, housing, and health codes.
 5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property north and west of the subject site is zoned SF-5 and is developed with single-family residences, while the property to the east is also zoned SF-5 but is currently undeveloped. Property south of the subject site is zoned LC and is developed as a shopping center with frontage along Central Avenue.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family residential units as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and two-family development should have no negative effects on surrounding single-family residences. The proposed duplexes would serve as a transitional buffer from the more intense commercial development and Central Avenue south of the site to the remaining neighborhood further to the north and west.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide” of the Wichita-Sedgwick County Comprehensive Plan identifies the application area as “Urban Residential.” The Urban Residential category encompasses all development densities found in the municipality. The proposed development conforms with the requirements of the Unified Zoning Code.
5. Impact of the proposed development on community facilities: The proposed duplex development should have no greater impact on community facilities than development that could take place under the current single-family zoning.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

SLOCUM mentioned several corrections to the Staff Report including that the site size should be .84 acres; that east and west should be switched on page 2 under Background, paragraph 2, lines one and two; and added that the entire application is subject to platting within one year.

MARNELL (In @1:36 P.M.)

MOTION: To approve subject to staff recommendation.

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

-
5. **Case No.: CUP2009-02** – Greg Norris and Russ Norris (owners); Baughman Company P.A., c/o Russ Ewy (agent) Request DP-164 Westwind II Amendment #4 to allow outdoor vehicle and equipment sales (car rental) on Parcel 5B zoned LC Limited Commercial on property described as:

Lot 5, except the East 250 feet thereof, Westwind 3rd Addition to Wichita, Sedgwick County, Kansas. Generally located on the south side of 21st Street North, east of Tyler Road.

BACKGROUND: The applicant seeks a CUP amendment to allow outdoor vehicle and equipment sales (car rental) on Parcel 5B. The proposed car rental will use existing retail space in a building on the site, and rental cars will be placed on existing parking spaces on the site. The applicant anticipates no changes to the site for the vehicle rental business. DP-164 does not include outdoor vehicle sales or rental as a permitted land use. Also, the Unified Zoning Code (UZC) requires a Conditional Use for outdoor vehicle sales in LC Limited Commercial (“LC”) zoning, and does not distinguish between vehicle sales and rental. Therefore the applicant requests this CUP Amendment to permit vehicle rental on the site.

The 2-acre application area is developed with a multi-use commercial building. North of the site, across 21st Street North, is LC zoned property developed with commercial and office uses. South of the site is property zoned TF-3 Two-Family Residential, under DP-165, and developed with multi-family residential. East and west of the site is LC zoned property also under DP-165; east of the site is a car wash, and west of the site are commercial and self-storage land uses.

CASE HISTORY: The Westwind 3rd Addition was approved in 1987; DP-165 was approved in 1986.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Office, commercial
SOUTH:	TF-3	Apartment complex
EAST:	LC	Car wash
WEST:	LC	Office, commercial, self-storage

PUBLIC SERVICES: At this location 21st Street North is a five-lane arterial with a central turn lane and a 165-foot right-of-way. This section of 21st carries 31,074 average daily trips. All municipal services are available.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan designates this site as appropriate for local commercial uses, defined as commercial uses that do not have a significant regional market draw. The Comprehensive Plan has an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments (p. 12, Land Use-Residential Objective II. B). Strategy II.B3 states that there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas.

RECOMMENDATION: The CUP can specify the requested land use for vehicle rental only. Provided that the site maintains parking in conformance with the UZC, as the CUP already requires, the proposed vehicle rental should have no effect on surrounding properties. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. DP-164 Parcel 5B Proposed Uses shall be amended to include “outdoor vehicle sales (rental only)”.
2. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after final approval of this case, 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: North of the site, across 21st Street North, is LC zoned property developed with commercial and office uses. South of the site is property zoned TF-3 Two-Family Residential, under DP-165, and developed with multi-family residential. East and west of the site is LC zoned property also under DP-165; east of the site is a car wash, and west of the site are commercial and self-storage land uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC subject to the development standards contained in DP-164. Uses permitted on the site are LC permitted uses normally found in a shopping center, with the addition of vehicle repair. The site could continue to be used under the current zoning and CUP restrictions.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested CUP amendment should have no greater impact on nearby property than any other land uses permitted in DP-164.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan designates this site as appropriate for local commercial uses, defined as commercial uses that do not have a significant regional market draw. The Comprehensive Plan has an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments (p. 12, Land Use-Residential Objective II. B). Strategy II.B3 states that there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas.
5. Impact of the proposed development on community facilities: The proposed CUP amendment should have no measurable impact on community facilities.

JESS MCNEELY, Planning Staff presented the Staff Report.

FOSTER expressed concern about the types of vehicles and equipment that could be rented under the proposed zoning and asked staff if they could “tighten” up the criteria.

MCNEELY acknowledge that the Unified Zoning Code (UZC) doesn’t specify types of vehicles; however, he added that this request is for an Enterprise Car Rental facility. He said they could check with the agent for the applicant and see if they would agree to the rental of passenger vehicles only.

RUSS EWY, BAUGHMAN COMPANY, PA, AGENT FOR THE APPLICANT said they have no problem with the restriction to passenger vehicles only.

MOTION: To approve subject to staff recommendation, including the restriction of passenger vehicles only.

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

-
6. **Case No.: CON2009-03** - RRM Properties, LLC, RRM, LLC and Cornejo & Sons, Inc., (applicants, owners, and lessee); City of Wichita (owner-lessor) Request Amendment to City Conditional Use 425, as amended, to increase the height of fill permitted on a C&D landfill on property described as:

That part of Government Lot 1 in Sec. 10, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas lying east of the Wichita Chisholm Creek Diversion Canal, EXCEPT that part lying northeasterly of the A.T. & S.F. Railroad Right-of-Way, and EXCEPT that part described as beginning at the point of intersection of the north line of the NE 1 / 4 of said Sec. 10, with the west right-of-way line of said A.T. & S.F. Railroad; thence west along the north line of said NE 1 / 4, 431.6 feet more or less to the east line of the Wichita Chisholm Creek Diversion Canal Right-of-Way; thence southeasterly along the east line of said Drainage Canal Right-of-Way a distance of 646.5 feet more or less to the center line of the abandoned bed of the Chisholm Creek; thence northeasterly, easterly, and southeasterly, along the meanderings of the center line of said abandoned Chisholm Creek to a point 680 feet south of the north line of said NE 1 / 4; thence east parallel with the north line of said NE 1 / 4, 248.34 feet more or less to a point on the westerly Right-of-Way line of said A.T. & S.F. Railroad; thence northwesterly along the westerly Right-of-Way line of said railroad to the point of beginning, and EXCEPT a tract of land in the NE 1 / 4 of Sec. 10, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, further described as

follows: Beginning at a point on the westerly right-of-way line of the A.T. & S.F. Railroad, N89° 47'W, 1526.15 feet and S37° 31'E , 859.98 feet from the Northeast corner of the said NE 1/4 of said Sec. 10; thence along said westerly right-of-way line S 37° 31' E, 1499.21 feet to the east line of said NE 1/4; thence along said East line S02° 46' W, 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances N26° 46'W, 46.59 feet, N13°15'W, 213.50 feet, N43°01'W, 349.10 feet, N28° 53'W, 472.42 feet, N49° 23'W, 417.83 feet, S25°00'W, 138.42 feet, S76°24'W, 96.58 feet, N31° 05'W, 209.45 feet, N05°10'W, 194.00 feet, N47°00'W, 25.48 feet; thence S 89°47'E, 248.34 feet to the point of beginning, TOGETHER WITH those portions of Government Lots 1 and 2 of Sec. 11, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, lying westerly of a line drawn parallel and concentric with and distant 50.0 feet westerly, as measured at right angles and radially from the Burlington Northern and Santa Fe Railway Company's (formerly the Atchison, Topeka and Santa Fe Railway Company) Main Track centerline, as now located and constructed and lying north of the following described line: Commencing at the intersection of the north line of said Lot 2 with a line which lies 50 feet westerly of, measured normally distant from the center line of the present main track of the Railway Company; thence in a southerly direction along said line which lies 50 feet westerly of, normally distant from and parallel to said center line of the present main track of the Railway Company, a distance of 550.8 feet to the true point of beginning; thence N80°00'W, 137.6 feet; thence N05°15'W, 60.25 feet; thence west to the left bank of the Arkansas River.

AND

A tract of land in the Northeast Quarter of Section 10, Township 28 South, Range 1 East of the Sixth P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly right-of-way line of the A.T. & S.F. Railroad, N89° 47'W, 1526.15 feet and S37° 31'E , 859.98 feet from the Northeast corner of the said NE/4 of said Section 10; thence along said westerly right-of-way line S 37° 31' E, 1499.21 feet to the east line of said NE/4; thence along said East line S02° 46' W, 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances N26° 46'W, 46.59 feet, N13°15'W, 213.50 feet, N43°01'W, 349.10 feet, N28° 53'W, 472.42 feet, N49° 23'W, 417.83 feet, S25°00'W, 138.42 feet, S76°24'W, 96.58 feet, N31° 05'W, 209.45 feet, N05°10'W, 194.00 feet, N47°00'W, 25.48 feet; thence S 89°47'E, 248.34 feet to the point of beginning, shown by actual survey to contain 4.30 acres more or less.

AND

That part of the West Half (W ½) of the Southwest Quarter (SW ¼) of Section 11, Township 28 South, Range 1 East of the 6th P.M. in Sedgwick County, Kansas, bounded on the South by the Kansas Turnpike Right-of-Way; on the West by the Arkansas River; on the East by the Right-of-Way of the Atchison, Topeka & Santa Fe Railroad; and on the North by the tract of land heretofore deeded to the Atchison, Topeka & Santa Fe Railroad Company, as disclosed in Book 548 at Page 136 of the Register of Deeds of Sedgwick County, Kansas, and containing approximately 4 Acres, more or less.

AND

Commencing on the W line of RR & 378.75' SE of the N line of the NE/4; then W 526.58' for the beginning; then SE 260.26' then Easterly 121.39' to the center line of the creek; then SW 141.2' to the E line of the canal; then NW to a point West of beginning; then E 21.47 'to the point of beginning in Section 10, Township 28 South, Range 1 East. Generally located southwest of K-15 and 31st Street South.

BACKGROUND: In February of 1997, Conditional Use 425 (CU 425) was approved by the Metropolitan Area Planning Commission (MAPC) that allowed RRM, LLC to develop a construction and demolition (C&D) landfill on a tract of land that is located south of 31st Street South and west of Highway K-15. Ownership of the application area is divided between the City of Wichita, 17.46 acres, and the

applicant who owns an abutting 19.18 acres. Combined the two ownerships make up the 36.64-acre C&D site, and the application area that is the subject of this request. Among the conditions of approval was a condition that established a maximum height of fill. The applicant is requesting an amendment to CU-425 (as amended previously by Conditional Use (CON) applications: CON2002-37, CON 2003-51, CON2005-01 and CON2008-42) to increase the allowed height of fill for the C&D landfill to an elevation of 1362 NGVD29 (National Geodetic Vertical Datum of 1929) on the northern end, and 1320 NGVD29 on the southern end. Condition H of both previously approved CON2003-51 and CON2005-01 limit the maximum height of C&D fill to no higher than five feet above the grade of railroad tracks at any cross section.

According to the applicant's engineer, the elevation of the land closest to the railroad tracks ranges from a low point of 1285 NGVD29 to a high of 1308 NGVD29. Since Condition H limits the height of the fill to no higher than five feet above the tracks at any cross section, the current maximum height of fill is limited to an elevation of 1290 NGVD29 on the north and 1313 NGVD29 on the south, plus the height of the railroad bed ballast, ties and tracks. The requested maximum height of 1362 NGVD29 on the northern end is 72 feet higher than currently permitted. The requested height of 1320 NGVD29 on the southern end is seven feet higher than currently permitted. The present highest height of the fill on the northern end was reported by the applicant on February 13, 2009, to be 1351 NGVD29, and the highest point on the southern end is 1307 NGVD 29.

The applicant's proposed profile has its highest point, 1362, on the northern end sloping down southward to the approximate center of the fill area, which is proposed to have an approximate elevation of 1306, then increases in elevation as one goes further south to the proposed southern high elevation of 1320 NGVD29.

The applicant is not requesting any change or additions in permitted use or extension of time for operation of the C&D landfill, just the increase in height of fill; however, the applicant's site plan proposes to leave an unfilled area in the northwest corner of the site that is labeled "proposed transfer station location." This application, CON2009-03, did not include a request for a transfer station. A separate application will have to be made for consideration of a transfer station, or CON2009-03 will have to be amended to include consideration of a transfer station at the same time the current application for an increase in height is being considered. Any action taken on CON2009-03, as currently filed, does not represent an approval or denial of a transfer station, and does not permit the applicant to install or operate such a use on the site.

Access to the site is by a driveway connected to Highway K-15. The property is zoned Limited Industrial ("LI") subject to development conditions contained in the previously mentioned conditional uses, and is located southwest of the intersection K-15 with 31st Street South, including the land between K-15 and the Arkansas River, from south of the terminus of 31st Street South to I-35 (KTA).

As indicated above, a portion of the site is owned by the City of Wichita. (See attached map.) The City's property is leased to Cornejo and Sons, Inc. and RRM, LLC c/o Ron Cornejo, under the terms established by the June 3, 1997, lease agreement. By the terms of the lease, C&D activities are scheduled to cease by December 31, 2010, (CON2005-01). Condition 10 of the lease states that within six months after the cessation of operations the site is to be closed, and the applicant is expected to return the leased premises to the City in a condition established by Exhibit B of the lease that depicts the site as a linear park (attached). The lease agreement expired on April 1, 2005, but was automatically extended to be coterminous with extensions to the Conditional Use permit. If this request is approved as requested, the contract should be amended to address the park site plan as it appears to have a wider, flatter top than depicted by the site plan associated with this application. It should be noted that this land is not owned by the Wichita Park Board, as is some city park land; therefore the ultimate re-use of the site rests with the City Council. Some safety concerns have been expressed about having a park whose only access is across an active railroad line. Another aspect regarding re-use of the site for a park is: while the proposed steeper slope may limit some of the uses to which the re-developed site might be put to use, the higher elevation will provide a better screen between the shoreline of the river and the urban activity occurring

on the railroad tracks, K-15 and the other more intensely developed properties located east of the site. Shoreline is highly valued as a recreational setting, and a screen that isolates the river bank from more active uses could be viewed as an amenity once land filling activities are complete.

It has also been noted that the applicant is currently excavating and replacing material previously installed, and is re-grading the site to meet KDHE compaction and slope requirements. As part of that activity, the applicant expects to gain additional fill volume, possibly as much as eight feet in some places, due to improved compaction.

The majority of the land located west of K-15 Highway, and north of the landfill site is zoned LI, and is currently used for construction activities, including a rock crusher and a building wrecking/salvage construction business. The Wichita Wastewater Treatment facility, the closed Chapin landfill, the Wichita drainage canal and the Arkansas River are located west of the application area. East of the site are: railroad tracks, K-15 Highway, several single-family residences on property zoned SF-5 Single-family Residential (“SF-5”), and a mobile home park (at the southeast corner of 31st street and K-15) located on property zoned LC Limited Commercial (“LC”) and manufactured home park on property zoned MH Manufactured Home (“MH”) directly east of the site. Several commercial uses are located at the northeast corner of 31st Street and K-15 on property zoned LC. Areas south of the landfill are undeveloped and zoned LI.

CASE HISTORY: CU-425, approved in February 1997, allowed the establishment of the C&D landfill, subject to conditions, including maximum height of fill limitations, and the initial closure date of April 1, 2003. CON2002-37, granted in 2002, extended the deadline for closure to April 1, 2004. The applicant stated that, in part, they needed the time extension due to the nearly two years that were lost between the City’s initially conditional use permit approval in 1997 and KDHE permit approval in 1999. CON2003-51 extended the deadline to April 1, 2005, and CON2005-00001 to December 31, 2010. CON2008-42 added acreage to the area permitted to be filled and eliminated the restriction that only licensed haulers can bring loads to the landfill.

ADJACENT ZONING AND LAND USE:

NORTH:	LI, LC	Rock crusher, building wrecking/salvage, mobile home park, vacant commercial buildings, auto repair
SOUTH:	LI	KTA, lumber yard, Chapin Park
EAST:	LI, SF-5, MH	Railroad line, single-family residences, manufactured home park
WEST:	LI	Arkansas River, Wastewater Treatment Plant

PUBLIC SERVICES: The site has access to K-15 Highway, a four-lane expressway. Municipal sewer and water services are not necessary for this use.

CONFORMANCE TO PLANS/POLICIES: The “Wichita Land Use Guide” depicts this site as appropriate for industrial uses. Location guidelines contained in the Comprehensive Plan indicate that industrial uses should be located near support services, and be provided with good access to major arterials, and should be extensions of existing industrial uses. The C&D site generally meets these criteria. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated throughout the County. The Arkansas River has traditionally had a status as a “navigable stream used for interstate commerce,” under landfill regulations and other statutory and judicial interpretations. These concerns and environmental concerns were addressed in previous Conditional Use and KDHE permit reviews, and it was found to be an appropriate use under State law and KDHE regulations.

RECOMMENDATION: Approval of the request would allow for the complete use of the site as a C&D facility, and by some measure, may reduce the demand for C&D capacity in other locations by the

volume allowed with the increased height on this site. Currently, this is the only C&D facility operating in the southern part of Sedgwick County. Increasing the fill height of the facility could reduce the travel distance for citizens, smaller contractors or home remodelers living or working in the southern part of the city and county. The requested height extension up to 1362 on the north would allow a portion of the fill to be some 72 feet higher than the currently permitted northern fill elevation of 1290. The requested southern elevation of 1320 is more consistent with the currently permitted elevation of 1313. Approval of the request to increase the fill height by 72 feet potentially makes it more difficult to re-use the site as a traditional linear park; however improvements such as paved walkways may mitigate some of that concern. It is recommended that the site be developed consistent with the conditions listed below, amending Condition H to permit fill to a maximum height of 1351 NGVD29 on the north and 1320 NGVD29 on the south, including the soil cap required for closure; and references to a transfer station be removed from the site plan.

- A. Demolition and construction wastes as defined by KAR 28-29-3(G) and City Code 7.08.020(8), shall be the only landfill material permitted. Hazardous or toxic wastes, as defined by K.S.A. 65-3430 et seq. shall not be permitted for disposal at the site.
- B. The landfill operation shall obtain all applicable permits and proceed in accordance with all conditions established by the Kansas Department of Health and Environment (KDHE), Wichita-Sedgwick County Health Department, FEMA, the Corps of Engineers, the Department Wildlife and Parks.
- C. The deposit of material on site shall cease by December 31, 2010.
- D. The landfill may be open to the general public. A landfill operator shall be on the site during all hours of operation for the purpose of screening incoming trucks for inventory of the type, size and quantity loads, and direction of loads to the appropriate cells. Hours of operation shall not exceed 7:00 AM to 6:00 PM Monday through Saturday. Access to the subject property shall be prohibited except during the hours of operation.
- E. The delivery of construction and demolition waste to the site shall be only by way of the K-15 entrance.
- F. A minimum 6-foot high fence shall be installed on the earthen screening berms along the northeastern property line, if determined to be needed by the Zoning Administrator, to minimize the blowing of any materials onto adjacent properties. The fence shall be either chain link or welded or woven wire with openings no larger than two inches.
- G. Upon written notice of any violation by the City Zoning Administrator or the Wichita-Sedgwick County Health Department, the operation shall cease and the violation shall be corrected with 48 hours.
- H. A detailed grading/drainage plan shall be submitted to the Department of Public Works for review and approval prior to commencement of operations. A copy of the approved grading and drainage plan shall be submitted to the Planning Department for filing with other case materials. The operation of the landfill shall be in conformance with the approved grading and drainage plan, and with the "Site Plan, as amended" and "Sections on Construction and Demolition Area" attached as exhibits to these conditions, except that the maximum height of the fill, including closure cap (exclusive of the screening berm) shall be no more than 5 feet higher than the elevation of the Santa Fe railroad track in any cross section not exceed NGVD29 Datum elevation of 1351 on the north and 1320 on the south, and the final contour of the fill area shall conform to the elevations depicted on the site plan titled "Closure Plan" and dated 12-24-08. Landfill operations shall be staged, with berms to be constructed and seeded along the east face of the fill to screen the operations for view in that direction. No more than 6 acres shall be in

operation at any one time. Prior to the opening of any new area the previous area shall be graded and seeded in accordance with the approved plan.

- I. Prior to commencement of the landfill operation the applicant/owner shall obtain a guarantee acceptable to the City Attorney and payable to the City of Wichita guaranteeing that cover material, final grading, and seeding are performed, as detailed in the approved grading plan. This guarantee shall be in the amount of \$100,000.00.
- J. The applicant/owner shall pay a yearly fee to the City of Wichita to offset the cost of landfill inspection by the Wichita-Sedgwick County Health Department. The fee shall be paid prior to the operation of the landfill and shall be \$1,000.00 for the first 12 months of operation. The fee for subsequent periods shall be established after review and recommendation by the Wichita-Sedgwick County Health Department to the City Council. The maximum increase in the fee shall be limited to 100% for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.
- K. Prior to commencement of the landfill operation the applicant/owner shall file a restrictive covenant for the application area, which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit the construction of structures which penetrate the final cap or cover, unless authorized by the Health Department; and require approval of the Wichita-Sedgwick County Health Department for use of the land for the production of food crops. The covenant shall be in such form as may be approved by the City Attorney.
- L. The applicant/owner shall erect a sign prior to landfill operation. This sign shall be a minimum 8-foot wide by 4 foot high and be prominently displayed at the site entrance. The sign shall include the display of the following message in 4 inch or larger letters that contrast with the background:

THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTE. GARBAGE AND
HAZARDOUS WASTE IS NOT ALLOWED. LANDFILL OPERATES 7:00 AM TO
6:00 PM MONDAY THROUGH SATURDAY.

In addition to above information, the sign shall contain all information required by state agencies. The sign shall be maintained in good repair and be clearly visible.
- M. Prior to the commencement of the landfill operation, the applicant shall remove from the site all surface material which is not defined as demolition or construction waste by KAR 28-29-3(G) and City Code 7.08.020(8).
- N. Prior to the commencement of the landfill operation, the applicant shall provide for installation and monitoring of a network of at least four wells, which draw water from the uppermost permanent aquifer. These wells will be installed, constructed, operated and sampled to comply with the requirements of the Wichita-Sedgwick County, and shall remain in operation for 10 years from the date landfill closure. Collection and analysis of samples from the wells will be accomplished on a quarterly basis by the Health Department on a quarterly basis, and the actual costs of the monitoring shall be reimbursed by the applicant/owner. Monitoring of runoff and methane shall also be provided for 10 years after closure of the landfill.
- O. The applicant shall pave the 31st Street entrance, as well as water all unpaved roadways, as needed, in order to minimize dust. Cover material shall be applied daily to the area being filled. The operator shall be responsible for street sweeping as necessary on K-15 to minimize the accumulation of mud or debris.
- P. The applicant shall install traffic detectors at the time the entrance drive is paved, in accordance

with City Engineering specifications.

- Q. The applicant shall install a deceleration lane to City Engineering specifications on southbound K-15 at the entrance to the landfill, prior to commencement of the landfill operation.
- R. This proposed construction and demolition waste landfill shall be in compliance with all conditions of approval by the MAPC, and/or the Governing Body, as specified above or this conditional use shall be considered null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The majority of the land located west of K-15 Highway, and north of the landfill site is zoned LI, and is currently used for construction activities, including a rock crusher and a building wrecking/salvage construction business. The Wichita Wastewater Treatment facility, the closed Chapin landfill, the Wichita drainage canal and the Arkansas River are located west of the application area. East of the site are: railroad tracks, K-15 Highway, several single-family residences on property zoned SF-5, and a mobile home park (at the southeast corner of 31st street and K-15) located on property zoned LC and manufactured home park on property zoned MH directly east of the proposed Phase III area. Several commercial uses are located at the northeast corner of 31st Street and K-15 on property zoned LC. Areas south of the landfill are undeveloped and zoned LI. The character of the area is predominantly industrial and commercial, except for the manufactured home park and the single-family subdivision located east of K-15.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned for LI subject to the conditions in CU-425, as amended by CON2002-37, CON2003-00051, CON2005-00001 and CON2008-42, and has been used for a C&D landfill since about 2000. From a physical standpoint, the site appears to be able to accommodate the proposed increased heights. On the flip side, one of the conditions of approval requires that the C&D operations cease by December 31, 2010, while another condition limited the height of fill to no higher than five feet above the elevation of the railroad tracks at any cross section, 1290 to 1313 NGVD29. The site has already been filled, at one location, to an approximate elevation of 1351, 61 feet higher than initially expected. Other portions of the site are proposed to be filled to 1320 NGVD29, seven feet higher than permitted by the current Conditional Use approval. The City of Wichita owns a portion of the application area, and has allowed the operator to develop the C&D landfill subject to the conditions contained in the Conditional Use approvals referenced above, and the lease agreement. The lease agreement intended that the site be reused as a linear park. Increasing the height of fill with the contours shown on the submitted site plan may limit the reuse of the site as a traditional park as depicted on Exhibit B of the lease agreement, but does leave the site to be used in some capacity as a park or open space and as a screen for the river bank. Concerns have been expressed with the safety of having parkland whose only access is across an active railroad track.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request increases the height of the landfill approximately 72 feet over the current height limitation, and would make the landfill the highest land form in the immediate area. Since the commencement of landfill operations, nearby residents have complained to the Office of Central Inspection (OCI) about dust and debris, allegedly coming from the application area. The operator has had four time extensions, keeping the use in operation much longer than initially expected by nearby residents. Depending upon the volume of material coming into the site, and compaction of the fill material, increasing the height could well lead to another request for extension of time, leaving residents to continue to react to what they feel is dust and debris generated from the site. OCI reports that they have investigated a number of complaints but have not filed any criminal complaints against the applicant. Nearby property owners have an expectation by the terms of the

previously approved conditional uses and the lease agreement that the fill area would have a limited height and the site would be able to be developed into a linear park. Approval of this request probably limits the range active recreational uses of the site due to the slope and the narrow flat area left on top, and the need to prevent erosion that could compromise the soil cap. However, increasing the height should not detrimentally impact nearby property owners to any greater extent than they are being impacted today.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Increasing the height to elevation 1351 and 1320 NGVD29 would allow the site to be fully utilized as a C&D landfill, and not cause the operator to remove material already placed on the site. Limiting the height to current elevations of 1351 and 1320 NGVD29 would presumably, with better compaction, allow for more fill material to be brought in, thus reducing haul time, expense and convenience for dropping off demolition wastes in the southern part of Sedgwick County. Presumably denial of the applicant's request entirely and leaving the height limitation of five feet above the tracks of the railroad would be an economic hardship upon the operator.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Land Use Guide" depicts this site as appropriate for industrial uses. Location guidelines contained in the Comprehensive Plan indicate that industrial uses should be located near support services, and be provided with good access to major arterials, and should be extensions of existing industrial uses. The C&D site generally meets these criteria. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated throughout the County. The Arkansas River has traditionally had a status as a "navigable stream used for interstate commerce," under landfill regulations and other statutory and judicial interpretations. These concerns and environmental concerns were addressed in previous Conditional Use and KDHE permit reviews, and it was found to be an appropriate use under State law and KDHE regulations.
6. Impact of the proposed development on community facilities: Approval of staff's recommendation will leave the site in a better position to be used as a public park than if the applicant's request is approved. Due to neighborhood complaints, the facility has generated additional inspections from various enforcement officers.
7. Neighborhood support or opposition. There has been significant neighborhood opposition to earlier requests to modify conditions regulating landfill operations at this location, and there have been subsequent complaints regarding dust and debris.

DALE MILLER, Planning Staff presented the Staff Report.

MILLER apologized if the use of the term "elevation" instead of "height" caused any confusion on the application. He commented that the applicant was requesting a height of 1362 on the north and 1320 on the south. He said DAB III recommended that they be allowed to fill any areas that are below the current five feet above the railroad grade restriction. He said several citizens and neighbors spoke against the proposal citing dust and debris generated by the C&D activity. He said staff recommendation was to allow a height of up to 1351 on the north and 1320 on the south. He added that the landfill permit will cease December 31, 2010, and that the applicant is not asking for an amendment to the time.

MITCHELL asked staff why they did not recommend approval of the applicant's elevation requests. He asked what the purpose was of limiting the elevation to what it is now.

MILLER said there were several factors including the City's commitment to the neighborhood that this use would end at some point; the elevation is already 1351 in some places, and it didn't make sense to

make the applicant remove any materials because that would cause more problems with dust and debris. He said staff wanted to try to accommodate the applicant's request and neighborhood expectations so they thought some compromise in the middle would work for both parties. In addition, he said staff feels where the fill is now is an appropriate, particularly since the location is to be used for parkland per the original lease agreement. He said 11 feet or higher will create a 3/1 slope which is the maximum allowed by the Kansas Department of Health and Environment (KDHE). He said the slope is going to limit the amount of space on top to be used for a traditional park. He said some special type of park might work, but the steepness of the slope is going to be an issue.

MILLER STEVENS asked if the 1351 included the cap, or would the cap go on top of that.

MILLER reported that the DAB recommended that the cap go on top of the elevation. He said Planning Staff recommended including the cap in the 1351 elevation.

FOSTER asked if staff was looking at other sites around and outside the county for this C&D use. He suggested there may be a need to keep filling this space up at this point in time.

MILLER responded that one of the considerations was that there isn't any other C&D landfill in the southern part of the county and that it made sense to maximize this space since it already exists and there is a need for this use. He mentioned Brooks Landfill at K-96 and Hoover. He also mentioned that Mr. Cornejo testified at the DAB meeting that the site will probably be full prior to the December 31, 2010, deadline.

FOSTER clarified that the Park and Recreation Department doesn't own any of this land, and asked if the Park Department actually wants this as a future park site.

MILLER acknowledged that the Park Department did not own the land; however, he said the Park Department Director has indicated they would be interested in this area as a park site. He also said the option for a park was included in the terms of the applicant's lease which stipulated that the area be left in a certain condition to be used as parkland. He said the Park Board has expectations based on the terms of the lease. He said there are some access concerns because patrons will have to cross very active railroad tracks to get into the area and, that is a negative factor.

MITCHELL asked the date of the original application.

MILLER said 1997.

DENNIS reported that he has had ex parte communication on this item. It was the general consensus that all Commissioners had received some type of communication.

CHAIRMAN DOWNING mentioned that one communication he received alleged that the location was operating illegally and that the original permit should never have been issued. He requested that the Law Department comment on that issue.

JOE LANG, CITY ATTORNEY briefly explained that KDHE issued the permit in error because of the location's proximity to a navigable stream. He said the issue was litigated and a settlement reached with KDHE, the City of Wichita and the Sierra Club. He said KDHE extended the permit and grandfathered in the activity. He said the C&D landfill is legally operating now.

HENTZEN pointed out that Chapin and Brooks are also located along the river.

BOB KAPLAN, REPRESENTING THE APPLICANT said he would make a brief presentation and asked if he could save any time not used for his rebuttal.

MOTION: To allow the agent to save presentation time for the rebuttal.

MITCHELL moved, **HENTZEN** seconded the motion, and it carried (13-0).

KAPLAN said the applicant has made this request simply to accommodate the existing fill heights that exist now. He said the original conditional use application approved in 1997 did not have a height restriction. He said the first height restriction appeared in the 2002 amendment, 5 years after the fact. He said at that time, they were already past the 1362 and 1320 point.

KAPLAN said they believe they will be done at the site sooner than the December 31, 2010, deadline since they are already in the process of covering the area. He said dust and debris is secondary to C&D operations, and added that the dust is from the Rock Crushing Operation. He said every landfill has issues and that his client cooperates fully and remediates any issues as soon as possible. He mentioned picking up paper, providing cover and screening. He said he thinks Mr. Cornejo does an admirable job in keeping within restrictions when compared with other landfills in the state. He said it would be foolish not to maximize use of the site since it is the only C&D in south Wichita. He said if you are going to have development you are going to have to have C&D landfills.

KAPLAN introduced **PAUL CLARK** from Allied Environmental Consultants who was present to answer any technical questions on the operation. He referred to an actual photo which he said was an accurate depiction of what the site will look like when the C&D is completed. He said it doesn't do any good talking about how the conditional use shouldn't have been approved in 1997.

HILLMAN said he would like to understand how they remediated the violations for arsenic and lead and how they will continue to meet guidelines while moving fill around at the site.

RON CORNEJO, CORNEJO AND SONS said he doesn't believe there was a violation for arsenic and lead, that he is aware of.

HILLMLAN referred to the Staff Report, specifically, the report from the Department of Environmental Services.

CORNEJO indicated he didn't believe he saw that. He said they monitor and test water samples from the wells every 6 months. He said they had one test that was marginal; however, they retested that and it came back fine.

HILLMAN asked why they paid a \$15,000 fine in 1998.

CORNEJO said that fine was for compaction and site slopes. He said they redid the sloping because the slopes were too steep and not compacted properly, that was not for pollutants.

HILLMAN asked if they would be bringing in additional materials to the site.

CORNEJO said they would be importing the 18" impermeable clay cap that goes on the top of the landfill and the 12" of vegetative material.

HILLMAN commented that in the materials provided with the Staff report, even after retesting, arsenic levels at the site exceeded KDHE guideline levels.

CORNEJO said he didn't believe they have had high levels of contamination on site. He asked **PAUL CLARK**, who he explained does monitoring and landfill management for them, to address the issue.

PAUL CLARK, ALLIED ENVIRONMENTAL CONSULTANTS, WICHITA referenced the November 7, 2008, citation finding that indicated that arsenic exceeded KDHE Tier 2 RSK values at 3

wells. He said that finding implied that the arsenic was naturally occurring and not coming from the landfill itself. He commented that he had been consulting engineer since April, 2008, so he was catching up on some of the background information at the site. He commented that they monitor a number of landfills across the state including Cowley County, Wellington, and investigation and reporting for Harvey County so they see a lot of different situations because they do a lot of monitoring. He said ground water often has arsenic, lead, cadmium and chromium which are naturally occurring elements. He said heavy metals also occur naturally in sediments in south central Kansas, which have the "red beds" due to those chemicals.

KENNY DIXON said he grew up in this neighborhood and bought his house from his folks because he chose to live there. He said he understands that the height limit was supposed to be 5-feet above the level of the railroad and that was it. He said once Cornejo reached that 5-foot point, they kept on going. He said he doesn't know if that was greed or laziness. He said this site has reached its limit and probably shouldn't have been allowed to be dumped there to begin with. He said he can't see how this is going to be turned into a public park with this level and said it will be more of a hazard resulting in lawsuits. He said allowing this to continue to happen with trash blowing off the site is hurting peoples businesses in the area. He also mentioned that people have to clean their cars every day because of the dust and dirt. He said a lot of people that were at the DAB Meeting last night can express themselves a lot better than he can. He concluded by mentioning the foul smell, the fact that it is an eyesore and a big mountain of trash. He also mentioned that he had taken a day of vacation to come and speak to the Commission about this.

JOHN KEMP, 3000 EAST DUNHAM, PRESIDENT OF THE K-15 NEIGHBORHOOD

ASSOCIATION said neighbors were present to try to see if they can stop the trash, dirt, dust and debris created from the site. He mentioned the elevations being discussed and asked the Commission if they would like to have a 72-foot height hill in their front yard 5- 6 stories high, because that is what he has to look at every day from now on with all the dust, trash, and odor. He said in 1997 the Army Corp. of Engineers told the City of Wichita, Ron Cornejo, and the MAPC that the Arkansas River was a navigable river. He said the point was argued and this is where the whole mistake came from. He said Cornejo & Sons convinced the MAPC and the City Council that the Arkansas River was a non- navigable river where they can put the landfill. He said current State Law states that you are not allowed to put a landfill within 1½ miles of a river, whether it is navigable or non-navigable. He asked the Commission to take into consideration what the neighbors have been through since 1997. He said they have breathed dust and picked up trash. He also mentioned that he has glaucoma and that it stems from the environment that you live in. He said on October 26, 2001, **MR. CORNEJO** was cited and fined \$8,000 by KDHE for having stuff in the landfill that wasn't supposed to be there. He said the applicant's attorney is claiming that they didn't know anything about the 5-foot berm. He said then staff is claiming that they lost information on how long that 5-foot berm above the railroad track has been part of the conditional use. He said that condition was put in 1997 and has been in every amendment since then, which amounts to approximately eight amendments. He said he can prove it was there in the amendment papers. He said somebody is "pulling someone's leg" but they are not blowing smoke up his pant leg. He concluded by asking the MAPC if they would think about what the neighborhood is thinking about.

RICHARD HUGGINS, SUNNYBROOK said he lived ¼ mile from the site and that he can't add much to what **MR. KEMP** has said. He said with all the noise it is hard to enjoy an afternoon in your front yard or back yard. He said with the blowing dust, you can't keep anything clean. He also mentioned that the height of the fill seemed to reflect and amplify the train noise into the neighborhood. He said he didn't know anything about the 5-foot limit until last night. He said the applicant has been in non-compliance and requested that the height be stopped where it is.

KAPLAN responded that he was being quoted as saying things he never said. He said the 5-foot restriction was not there in the 1997 conditional use. He said it came about as the result of an amendment 5 years after it was originally approved and by that time, the 5-foot restriction had already been exceeded. He said although the 5-foot restriction was recommended by the Citizen Participation Organization (CPO)

in 1997, it didn't find it's way into the final conditional use approved by the City Council. He said whether the Arkansas River is a navigable river has not been a legal issue and has nothing to do with whether you can put a boat in it and float down river. He said the KDHE elected not be bound by the Army Corp. of Engineers and all that is history, so that is the end of that. He said his client is asking the MAPC to approve an elevation of 1,362 to the north. He stated that DAB III recommended approval last night to leave what is there and fill the areas that are below 5 feet. He concluded by stating that he believes his client is entitled to the relief they are asking for.

MITCHELL asked if anyone from Environmental Services was present at the meeting today. (No one responded.)

HILLMAN asked if anyone from the Park Board was present today. **MR. KEMP** said he worked for the Park Department.

HENTZEN asked **MR. KEMP** if he was present as an official of the Park Board or just a member of the Park Department.

KEMP said he was present as President of the K-15 Neighborhood Association.

It was the general consensus that **MR. KEMP** could not speak as a representative of the Park Department for purposes of this issue.

MOTION: That the height be capped at the 5 foot level as originally planned; properly sealed and planted; and turned over to the Park Department.

HILLMAN moved, and the motion died due to lack of a second.

MOTION: To approve the applicant's request for a height of 1362 on the North and 1320 on the south.

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

JOHNSON asked if that 1362 included the 18 inch clay cap and 12 inches of other fill.

MILLER commented that the applicant/agent was indicating that it does include the cap and fill.

VAN FLEET and **HENTZEN** requested clarification of staff's recommendation.

MILLER indicated that staff was recommending a 1,351 elevation on the north and a 1320 elevation on the south.

SUBSTITTUE MOTION: To approve subject to staff recommendation, as revised, that the 1351 elevation does not include the cap.

VAN FLEET moved, **FOSTER** seconded the motion, and it carried (8-5).

DOWNING, MARNELL, MCKAY, MITCHELL, MILLER STEVENS – No.

There was brief discussion concerning the cap and additional fill amounting to approximately 2 ½ feet and whether that would be included in the elevation or added after the elevation figures being discussed.

MARNELL asked the applicant how the 1351 elevation not including the closing cap would affect the life of the landfill.

CORNEJO said it doesn't extend the life of the landfill a great deal. He said they are fine with staff's recommendation if that is what they can get. He said they would love to have the additional space, but it doesn't mean that much.

PAUL CLARK explained that the cap would consist of 18" of impermeable highly compacted clay and 12" of top soil suitable for growing grass.

DIRECTOR SCHELGEL suggested revising paragraph H under conditions to indicate that the 1351 elevation *DOES NOT* include the cap closure.

MITCHELL said he will not support the substitute motion because he said the landfill was opened to serve a public purpose and it is still doing that; it has a closure date that is not going to be exceeded; and said he doesn't believe anyone can look at the difference between what the applicant has requested and what staff has recommended and know if the elevation has changed. He said if the applicant is going to finish using the site by 2010, he should be the given authority to do so in a way that is most practical for the public use.

MARNELL asked legal Counsel about the appropriateness of using State Letterhead on local zoning issues. He mentioned ex parte communication he received on this item from a State Representative on official State stationary. He said that seemed inappropriate and unethical to him.

JOE LANG, CITY ATTORNEY commented that was an opinion, but he could not give an answer on that.

MARNELL said so then it is just his opinion that it is unethical to try to use one's influence like that as though this is official State business.

LANG said he would have to look at State legislative rules as to what they can use their stationary for and he wouldn't want to make that determination anyway.

MARNELL asked if the Planning Commission had official stationary that he could use. He asked **MR. PARNACOTT** if he had a different opinion.

BOB PARNACOTT, COUNTY COUNSEL said he agreed with **MR. LANG** and said that would be a question for legislative ethics and he didn't know how they enforce those rules at the legislative level. He said there must be rules on how legislators can and cannot use their stationary and he suggested **MR. MARNELL** refer his question to them.

-
7. **Case No.: CON2009-05** – Pyles Investments, Inc., c/o Thomas Honton Request City Conditional Use request for Wrecking/Salvage Yard and Vehicle Storage Yard (Impound Lot) on property zoned LI Limited Industrial.

Lots 9, 10, and 11, Block 3, Perry's Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Mosley Avenue, 150 feet south of Bayley Street (1319 and 1325 South Mosley Avenue).

BACKGROUND: The applicant is requesting a Conditional Use to permit a wrecking/salvage yard on the LI Limited Industrial ("LI") zoned 2.2-acres of Lots 9, 10, and 11, Block 3, Perrys Addition. The Unified Zoning Code (UZC, Art III, Sec III-D.6.e) requires a Conditional Use for a wrecking/salvage yard in the LI zoning district. A wrecking/salvage yard is a lot, land, or structure used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage materials, junk, or discarded materials; and/or for the sale of parts thereof.

Typical uses include motor vehicle salvage yards and junkyards; UZC Art II, Sec II-B, 14(r). The applicants are proposing to store wrecked and operable vehicles impounded by the local law enforcement agencies and to hold an auction four times a year, in order to sell them. The site is a vacant steel fabrication plant with 3 buildings on it, and with only of a portion of the site paved.

Per the UZC, Art II, Sec II-B.14.q, the conditions for Conditional Use for a wrecking/salvage yard in the LI zoning district are:

- (1) Is not abutting an arterial street, expressway, or freeway;
- (2) In the opinion of the Planning Director, will not adversely affect the character of the neighborhood; and
- (3) Is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence.

Other information supplied by the applicant is that there will be no mechanical or body work done on the vehicles stored on the site. There will be no dismantling of vehicles on the site. There will be no storage and sale of parts on the site. Delivery of vehicles on the site will be by wrecking trucks, 24 hours per day 7 days a week. As mentioned, the site is also proposed to hold vehicles impounded by local law enforcement. Although this is a licensing issue, it can be used as a condition in regards to the land use issue. Impounded vehicles can have current tags and be operable or be wrecks. Thirty to 40% of the impounded operable vehicles are claimed by their owners within 30 days, after the owner pays whatever fees are owed; this can happen 24/7 on the site. There are a proposed four auctions a year at the site, Tuesday thru Wednesday, 9 AM to 2PM, with rainouts allowed. Typically crowds at the auctions are made up of salvage yard operators, who follow the auctioneer from car to car. There is no proposed amplification for the auctions. This site is proposed to be the main dispatch and auction site for both the Auto Inn and Action Wrecker Service. A dispatcher and security will be on site 24/7.

The site plan/aerial photo shows the location and size of the 3 buildings on the site, the proposed and existing 8-foot tall metal fencing, employee and customer parking, and ingress and egress onto Mosley. The site does not show the required 8-foot metal fencing on the north and south sides of the site. The site plan does not indicate if the parking and storage areas are paved; the City requires all parking and storage areas to be paved. The site plan shows no access onto Mead Avenue, which abuts the west side of the site. Mead is a dirt road with an active railroad ROW running on it; no access will be permitted onto Mead. This is one of two active railroad ROWs in the area, the other is located approximately 100 feet east of the site. The site plan shows outside storage for 40-50 vehicles and indoor storage for 60 vehicles. Storage of wrecked vehicles is included in the definition of a wrecking/salvage yard. The site plan shows no lighting, but the applicant proposes lighting for security reasons. The applicant proposes security cameras placed around the site for security reasons. The applicant proposes signage on one of the buildings facing Mosley.

The immediate area is zoned mostly LI. This zoning generally follows both of the active railroad ROWs, with Mead Avenue and its railroad ROW being its western edge. Properties in this area are developed as office –warehouse with truck shipping and include a glass company, an auto parts warehouse, and a printing company. There are several vacant business sites, including the subject site, which appears to have been a steel fabrication plant. There are no other auto storage yards or wrecking and salvage yards in the area. There is a larger, mostly single-family residential neighborhood, zoned MF-29 Multi-family Residential (“MF-29”), located approximately 200 feet west of the site.

CASE HISTORY: The subject property was platted/recorded as the Perrys Addition, October 20, 1884.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Office – warehouse
SOUTH:	LI	Office – warehouse, shipping
EAST:	LI	Mosley Avenue, vacant businesses, office - warehouse Shipping, railroad ROW

WEST: LI Active railroad ROW, unimproved Mead Avenue, printing, vacant office-warehouse

PUBLIC SERVICES: The subject property has direct access to Mosley Avenue, a paved two-lane urban collector. Mosley is interrupted, north of its intersection with Bayley Street by a vacation of its ROW and an active railroad ROW. It resumes at its intersection with Lincoln Street. Both Mosley and Bayley are classified as two-lane urban collectors by the WAMPO Federal Roadway Functional Classification Map, at this location. The 2030 Transportation Plan does not identify collectors. The Bayley – George Washington/K-15 intersection, is located approximately 300 feet east of the site, and is shown to have approximately 10,621 trips per day. George Washington is classified as a principle arterial, and shown to remain the same on the 2030 Transportation Plan. Municipal water and sewer are available to the subject site. All other utilities/services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies the subject site’s location as appropriate for “Employment/ Industry Center” development. The Land Use Guide identifies wrecking and salvage yards as appropriate for land identified for “Processing Industry” uses, which promotes more intensive land uses than the “Employment/ Industry Center” classification. The site is located in the “South Central Neighborhood Plan” (the SCN Plan. The SCN Plan was adopted by Council May 2006, with the MAPC approving amendments to it, February 19, 2009. These recommended amendments will proceed to City Council for consideration and final action. The SCN Plan categorizes the site as “Industrial,” which consists of employment based uses, and encourages uses such as manufacturing, research and warehousing. The proposed wrecked and operable vehicle storage yard is not one of those encouraged uses. The development around the proposed wrecked and operable vehicle storage yard is mostly office –warehouse and shipping, with some vacant businesses. There are no other wrecked and operable vehicle storage yards in the area; approval of the Conditional Use for the proposed wrecked and operable vehicle storage yard would be out of character with the existing development in the area. The SCN Plan’s locational guidelines have a “Least Desirable Land Uses” list which includes used car lots and resource processing industries. Since the proposed wrecked and operable vehicle storage yard (with its proposed auction held four times a year) is classified as a “Processing Industry” in the Comprehensive Plan, it clearly fits into the SCN Plan’s “Least Desirable Land Uses” category. The SCN Plan’s locational guidelines also state that the “Least Desirable Land Uses” should be restricted to properties that currently permit the use by right, which excludes wrecking/salvage yards, which is not a use permitted by right in the LI zoning district. The SCN Plan recommends changes in the zoning classification and approval of Conditional Uses that allow “Least Desirable Land Uses” be strongly discouraged. Approval of the Conditional Use for the proposed wrecked and operable vehicle storage yard would not follow the intent of the SCN Plan. The SCN Plan also states that where the locational guidelines of the Comprehensive Plan and the SCN Plan are inconsistent, the locational guidelines of the SCN Plan should apply.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED. The staff’s recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The immediate area is zoned mostly zoned LI. This zoning generally follows both of the active railroad ROWs, with Mead Avenue and its railroad ROW being its western edge. Properties in this area are developed as office –warehouse with truck shipping and include a glass company, an auto parts warehouse, and a printing company. There are several vacant business sites including the subject site, which appears to have been a steel fabrication plant. There are no other auto storage yards or wrecking and salvage yards in the area. There is a larger single-family residential neighborhood, zoned MF-29 Multi-family Residential (“MF-29”), located approximately 200 feet west of the site.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LI. A wrecking/salvage yard (the application) may be permitted with a Conditional Use in

the LI zoning district. The South Central Neighborhood Plan's (SCN Plan) locational guidelines have a "Least Desirable Land Uses" list which includes used car lots and resource processing industries. The proposed wrecked and operable vehicle storage yard (with its proposed auction held four times a year) is classified as a "Processing Industry" in the Comprehensive Plan, thus clearly fits into the SCN Plan's "Least Desirable Land Uses" category. The SCN Plan's locational guidelines also state that the "Least Desirable Land Uses" should be restricted to properties that currently permit the use by right. The proposed wrecked and operable vehicle storage yard is classified as a wrecking/salvage yard, which is not a use permitted by right in the LI zoning district. The "South Central Neighborhood Plan" recommends changes in the zoning classification and approval of Conditional Uses that allow "Least Desirable Land Uses" be strongly discouraged.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Properties in the area are developed as office –warehouse with truck shipping and include a glass company, an auto parts warehouse, and a printing company. Allowing an auto storage/wrecking and salvage yards in the area, would be out of character with current development and set a precedent for other vacant properties to apply for application for similar "Processing Industry" uses, which promotes more intensive land uses than the "Employment/ Industry Center" classification of this area.

4. Conformance of the requested change to adopted or recognized Plans/Policies: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies the subject site's location as appropriate for "Employment/ Industry Center" development. The Land Use Guide identifies wrecking and salvage yards as appropriate for land identified for "Processing Industry" uses, which promotes more intensive land uses than the "Employment/ Industry Center" classification. The site is located in the "South Central Neighborhood Plan" (the SCN Plan. The SCN Plan was adopted by Council May 2006, with the MAPC approving amendments to it, February 19, 2009. These recommended amendments will proceed to City Council for consideration and final action. The SCN Plan categorizes the site as "Industrial," which consists of employment based uses, and encourages uses such as manufacturing, research and warehousing. The proposed wrecked and operable vehicle storage yard is not one of those encouraged uses. The development around the proposed wrecked and operable vehicle storage yard is mostly office –warehouse and shipping, with some vacant businesses. There are no other wrecked and operable vehicle storage yards in the area; approval of the Conditional Use for the proposed wrecked and operable vehicle storage yard would be out of character with the existing development in the area. The SCN Plan's locational guidelines have a "Least Desirable Land Uses" list which includes used car lots and resource processing industries. Since the proposed wrecked and operable vehicle storage yard (with its proposed auction held four times a year) is classified as a "Processing Industry" in the Comprehensive Plan, it clearly fits into the SCN Plan's "Least Desirable Land Uses" category. The SCN Plan's locational guidelines also state that the "Least Desirable Land Uses" should be restricted to properties that currently permit the use by right, which excludes wrecking/salvage yards, which is not a use permitted by right in the LI zoning district. The SCN Plan recommends changes in the zoning classification and approval of Conditional Uses that allow "Least Desirable Land Uses" be strongly discouraged. Approval of the Conditional Use for the proposed wrecked and operable vehicle storage yard would not follow the intent of the SCN Plan. The SCN Plan also states that where the locational guidelines of the Comprehensive Plan and the SCN Plan are inconsistent, the locational guidelines of the SCN Plan should apply.

5. Impact of the proposed development on community facilities: Water, sewer and all other utilities are available to the site. The proposed use of this property should have limited impact on community facilities, with the exception of calls to OCI in regards to operating within the environmental standards of the City, as wrecking and salvage yards attract vermin.

However, if the MAPC finds this an appropriate use for this site, the staff recommends the following conditions:

1. The Conditional Use shall authorize the operation of a wrecked and operable vehicles yard only for vehicles impounded by the Wichita Police Department, the Sedgwick County Sheriff's Department and the Highway Patrol. The site shall be licensed by the Wichita Police Department. The license must be kept current, failure to maintain this license will cause the Conditional Use to be null and void.
2. The site shall be limited to outside storage for 40-50 vehicles and indoor storage for 60 vehicles.
3. There shall be no mechanical or body work done on the vehicles stored on the site. There shall be no dismantling of vehicles on the site, nor shall there be the storage and sale of vehicle parts on the site. In no event shall the Conditional Use authorize collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, bulky waste, salvage materials, junk, storage or bailing of solid waste, scrap paper, rags, metallic scrap materials or discarded materials; and/or for the sale of parts thereof.
4. All of the conditions of UZC, Art II, Sec II-B.14.q shall be enforced, including the 8-foot tall metal fencing around all sides of the site.
5. No access is permitted onto Mead Avenue.
6. All on-site parking and storage areas shall be paved with asphalt or concrete. The paved access drive will also be used for the delivery of vehicles for storage on the site. Parking shall be per the Unified Zoning Code.
7. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
8. No stacking of wrecked/inoperable vehicles shall be permitted. No vehicles shall be visible from ground-level view from Mosley or Mead Avenues or abutting properties.
9. Storage of all wrecked/inoperable vehicles shall be in an orderly manner with an exposed perimeter as specified by the Environmental Services to prevent rodent harborage and breeding.
10. The applicant shall maintain at all times an active program for the eradication and control of rodents.
11. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
12. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
13. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.

14. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
15. The applicant shall implement a drainage plan approved the Storm Water Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
16. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of a wrecking/salvage yard.
17. All conditions of the Conditional Use must be completed within 6-months or the application shall be null and void.
18. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

MCKAY declared a conflict of interest saying he owned property in the notification area and left the bench. He said he would like to reserve the right to speak from the floor.

BILL LONGNECKER, Planning Staff presented the Staff Report.

JOHNSON mentioned the South Central Neighborhood Plan (SCNP) approved by the MAPC and said he understood that anyone that didn't want their zoning changed could opt out.

LONGNECKER said the zoning on the site had not been changed and that the application was for a Conditional Use. He said the SCNP provided guidelines as to uses in the area. He said a wrecking and salvage yard is always a conditional use in LI Limited Industrial zoning.

JOHNSON asked what would happen if they put up a sign that said body shop.

LONGNECKER said a body shop can go into LI zoning.

JOHNSON commented so they could fill the lot with wrecked cars.

LONGNECKER said he would have to look at that because for a body shop, noting that the cars were probably currently licensed.

JOHNSON commented that the applicant is not going to be working on the cars. He observed a body shop could be done without Conditional Use.

MITCHELL asked how long the property has been vacant and added shouldn't that have been a consideration in the recommendation in the Staff Report.

LONGNECKER said he wasn't sure how long the site has been vacant and agreed that the consideration for how long it had been vacant was significant.

HENTZEN said this location is in the middle of a heavy industrial district. He said after the presentation on the SCNP, he was under the impression that the owner of a property could stay and do what they can do now. He said this is not on an arterial street and added that it seems to him that this use they have

asked for is ideal for the central of a heavy industrial district. He said he went out to the site and in all four directions he couldn't see past the buildings around him, yet staff is recommending denial. He said they don't want it unless you approve these 18 conditions. He said some of the conditions are reasonable and mentioned 10, 11, 12, 13, 14, 16, 17, 18 which have to do with rodent control and a few other environmental issues. However, he said he can't agree with staff's recommendation just because the SCNP was approved on February 19, 2009. He said he did not expect something like this in the staff report and said he would be glad to work a motion to rescind the SCNP.

MARNELL said he is baffled to see this issue come up again as a processing industry. He said staff described the whole area as warehousing and that this application was warehousing and outside storage of vehicles, this is not a salvage yard. He said this was the same "trick of hand" that happened to the request on South Rock Road where it is called a salvage yard when it is not. He said he is really going to be upset if he finds out after working on the Advance Plans Committee and working on the SCNP, that this is the kind of attitude and the result of the work on those plans. He said that reason staff was not recommending this type of a facility for this location, was the result of them using tricky language. He said this seems like a perfectly good use for this type of location. He said calling it a processing industry and classifying it as a salvage/junk yard when clearly it is not, is just not right.

DARRYL LESSON, REPRESENTING THE APPLICANT said Auto Inn has been a family operation for 60 years and is currently located in the 200 block of North Broadway. He said the present owner has been leasing the location at 21st Street to them for a number of years but now has different plans for the property so they are being forced to make a move. He said rather than rent, they bought this property because the size, facility, and location all met the requirements they needed. He said prior to purchasing the property, the Wichita Police Department and Sedgwick County Sheriff's Office inspected the property to be used for impounding vehicles and approved it. He said they probably should have known they would need a Conditional Use permit in order to put the operation there. He said the property was formerly used by Wichita Structural Steel who went into bankruptcy. He said that when the applicant had bought the property it was a junk yard with scrap metal and inoperable cars. He said the applicant hauled off 35 truckloads of debris and trash from the property. He said the conditions are immeasurably better at the location than they were before. He said they have installed exterior lighting for security reasons, surveillance cameras, and added that a dispatcher is on the premises 24 hours a day, 7 days a week. He said they believe there has been an improvement for the neighborhood from a security standpoint. He said they have filed two Police Reports since they have owned the property, once involving the theft of heavy copper wiring and other items causing approximately \$27,000 worth of damage, which his client has replaced. He said his client is under pressure to move from his current location and if he does not receive the Conditional Use permit, it will create a severe financial problem. He explained that this is strictly a storage operation; there is no salvage, no parting, no stacking, and no crushing of vehicles. He said these are vehicles that are picked up by WPD, the Sedgwick County Sherriff's Office, and Kansas Highway Patrol and sold at auction 3 – 4 times a year or the cars are picked up by owner's who pay a fine. He said adjacent to the site to the south is OK Transfer and Storage Company who store furniture in the building. He said the difference being is that they are selling vehicles and OK is selling personal property. He concluded by saying that they feel that this use is not a detriment to the neighborhood. He said they would like to continue operations with the City.

LESSON reviewed staff recommendations and commented that items 1, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14,16, 17, and 18 and paragraph 2 were all acceptable from the applicant's stand point. He said Item 4 which was the requirement for an 8-foot tall metal privacy fence surrounding all sides at the site was a concern. He said they checked and the competition such as Interstate and Happy Hooker do not have 8-foot metal privacy fences across the front of their property. He said the applicant has already installed a 6-foot chain link fence on the property, and they feel as long as the property is secured, since they have staff present on location 24/7; they don't believe an 8-foot metal privacy fence in front serves any purpose.

LESSON mentioned Item 15 and said they are not sure what implementing a drainage plan means since they have no plans of changing the elevation or what is currently there and the back lot is already paved with concrete. He also mentioned that the surrounding buildings shield the site from the street.

LESSON said the requirement of paving all of the lot would be a burden because it is a substantial area and they do not anticipate storing wrecked cars out there. He said that area will be used to park wreckers and for employee parking. He said this area has been a gravel drive for 50 years or more and they would like to continue on that basis.

HILLMAN asked where they were going to park the damaged vehicles that might be leaking oil, gas, grease and other fluids.

LESSON commented that those vehicles will be stored on the concrete, not on the bare ground.

FOSTER mentioned the requirement to keep a current license and asked if their services were provided to the City and County under contract.

TOM HONTON, ACCOUNTANT FOR AUTO INN said State Statutes require that if you have over 8 vehicles that cannot be started with a battery; you have to have a salvage license for an auto wrecking yard or storage yard. He said they have to be current with both the State and Federal government and they are audited by both agencies.

FOSTER asked if other entities would provide vehicles to the facility.

HONTON said no, they provide the service for the City of Wichita, Kansas Highway Patrol, and Sedgwick County. He said the cars could include wrecked or abandoned vehicles, vehicles that are impounded or involved in a death; and he said some vehicles are sequestered and stored as evidence.

FOSTER commented that it appears they have done a good job cleaning up the facility and asked if they were planning on making other improvements.

HONTON reiterated cleanup activities to date and added that they have constructed a new office area inside the facility including driver's area and reception area. He again mentioned installation of security lights and security cameras and added that they feel a privacy fence may create a hazard because then the area can't be seen from the street.

HILLMAN asked if they planned to have any interaction with the rail system to haul away cars.

HONTON said no. He said car owners come by the facility and pay fines or the cars are sold at auction.

VICKI CHURCHMAN, 1357 SOUTH BROADWAY, SECRETARY, SOUTH CENTRAL IMPLEMENTATION COMMITTEE said she is concerned about the anger expressed by the MAPC members. She said they are not trying to go behind anyone's back. She said they had no idea that this kind of business would be coming into their neighborhood. She said they were thrilled with the backing that the MAPC gave them during the preparation of the SCNP, and there has been no effort on their part to deceive anyone. She said they initially welcomed another business coming into the area until they drove by Auto Inn's current operation on 21st Street. She said she is no expert on junk yards but it was ugly, junky, and dirty. She said Auto Inn's current operation is a major concern to her. She mentioned that the South Central Neighborhood Association unanimously opposed the request and that DAB I also voted unanimously to oppose it. She said there has been concern expressed at today's meeting about filing up vacant space, but this location has only been vacant 6 months. She said one of the surrounding business owners indicated at the DAB meeting he tried to buy the building himself. She said about 8 representatives from other business opposed to this particularly business coming into the area also spoke at the DAB meeting. She also expressed concern about an auction being held at the site because there is

limited space and the only parking is located on the north side of the site. She said this is the least desirable usage in the area, it is not a currently approved use and it does not increase employment opportunities. She mentioned wreckers bringing wrecks into the area, increased traffic, leakage of chemicals such as gas, oil, and anti-freeze onto the concrete and running of into the dirt parking lot. She also mentioned the increased rodent population that these types of operations cause. She said she hopes to continue to get the backing of the MAPC and said they have worked hard to improve the neighborhood. She concluded by stating that businesses adjacent to this site are also opposed to this usage.

MARNELL said his comments were aimed at staff as to how this is classified as a “processing industry;” however, he said he is quite at odds with her if she finds this request an inappropriate use for this land in this industrial area.

LARRY MOND, 943 S. TOPEKA said he wanted to remind the Commission that this area is in the front yard of the new arena.

DALE CHRUCHMAN, 1357 S. BROADWAY, VICE PRESIDENT – SOUTH CENTRAL NEIGHBORHOOD ASSOCIATION, VICE PRESIDENT – SOUTH CENTRAL IMPROVEMENT ALLIANCE, PRESIDENT – IMPLEMENTATION COMMITTEE FOR THE SOUTH CENTRAL REVITALIZATION PROGRAM said they have been before the MAPC several times to try to improve an area of the City that has a very bad reputation--South Broadway. He said people and staff have been working very hard to come up with a plan that is working and that they have made a number of improvements in the area. He said this proposal flies in the face of the things they have stood for and worked for. He admitted that there was a junk yard along Santa Fe and St. Francis, but asked does that mean they want more of them. He said they would like to get rid of the one that is there. He suggested that the Commission visit Auto Inn’s current operation to see what it looks like and decide whether they want that type of activity in the center of Wichita. He said there is a need for impound lots and junk yards but they need to go into an industrial park or some other area where they fit in, not into an area of town that is mainly residential with a little industrial along the railroad. He also mentioned the small businesses in the area that are well kept and well run. He said those people attended the DAB and said they do not want the applicant for neighbors citing rodents, environmental problems, noise, and junk. He concluded by urging the MAPC not to okay this Conditional Use.

DAVE WEATHERSON, PRESTIGE GRAPHICS, INC. , 722 E ZIMMERLY said the large white building to the southwest is his business. He said he employs 24 people and does several million dollars worth of business a year. He said it is a local printing and graphics finishing company that has been located there for the past 28 years. He said he was present to speak on behalf of several other businesses in the vicinity surrounding the subject property including: Mr. Jerry Hughes, Owner of Docuplex Graphics, 725 East Bayley; Mr. Rick Hopper, Owner of Hopper Glass Company, 880 E. Bayley; Bill Humphrey, Owner of Humphrey Products, 719 East Zimmerly; Len Pillar, Owner of J&M O’Connor Company, 811 East Bayley; Mr. Ed Vollen, Owner of B&S Aircraft Instruments Facility, 1414 S. Mosley. He said they represent the businesses and property owners that surround the subject property; they employ 250 people; and create several million dollars in payroll. He said some of the industries in are in decline; however, all of them are dealing with an economy and neighborhood that is in decline. He said they all maintain clean, neat facilities and consider themselves an asset to the area. He said they are often tagged with graffiti, vandalized, and that streets and alley ways in the area are used as dumping grounds for unwanted trash and debris. He said they feel this use will only be a detriment to the area. He said a steady flow of wrecked, salvaged or impounded cars will only add more litter to the already deteriorating streets, and cause more congestion when the streets are already too crowded for passage as it is. He said there are no other auto wrecking/salvage yards (or however you want to classify them) in this area to his knowledge and the City of Wichita has not been seeking to place these operations within the City limits or adjacent to residential areas. He said as businessmen and property owners, they don’t need the City to go against their own 2030 Functional Land Use Guide, the South Central Neighborhood Plan, City staff recommendation, and the DAB recommendation for denial of the application. He said both of

the land use plans that cover the subject property do not allow for development of this type of operation in this area. He concluded by saying that allowing this use will add to the deterioration of the neighborhood and accelerate the already declining property values in this area. He asked the Commission to use their own perspective and look back in time and agree with him that these types of operations simply never get better, but continue to deteriorate and become more objectionable with time. He said this deterioration will lead to reduced property appraisals which will result in less property taxes being collected. He concluded by saying that on behalf of himself and the other concerned surrounding property owners in the area, he requested that the MAPC please deny this application.

HONTON commented that the applicant has hauled tons of trash from the site and that they are trying to fix the site up. He said they have been vandalized twice and added that this is a high crime area. He said they will be storing personal property impounded for safety purposes for the City of Wichita, Kansas Highway Patrol, Sedgwick County Sheriff's Office and Wichita Police Department on a temporary basis to be sold at auction or hauled off. He mentioned the 21st Street operation and said they are trying to upgrade, get a better facility and do a better job. He said most vehicles will be stored inside or behind concrete and that they will perform rodent control, and conduct the operation as a professional business.

HILLMAN asked how times a month they will hold auctions.

HONTON said auctions are held four times a year; the notices are posted in the newspaper; and that there is never a large crowd.

HILLMAN asked where they would park 30 cars.

HONTON said along Mosley and where employees park.

MILLER STEVENS asked how the business is currently licensed.

HONTON said they are licensed as a wrecking service by State Statutes. He said the salvage permit is issued locally in order to be a wrecking service.

FOSTER asked about the difference between limited and general repair.

LONGNECKER said limited repair means strictly mechanical and general repair allows for body work. He referred to page 2, paragraph 2 of the Staff Report, which refers to UZC, Art II, Sec II-B, 14.q. for this type of operation, which he said is a wreckage and salvage yard as defined by the UZC, and that no trickery was involved in the recommendation. He mentioned the requirements for the solid screening. He added that there are no interior side yard setbacks in LI zoning and said the surrounding buildings do provide some screening but there are gaps on the north and south sides. He said the UZC requires 6-8 foot solid fence. He also mentioned that some type of asphalt was also required as a minimum for parking.

MARNELL commented that the applicant objected to item #4, but asked since that is a requirement of the UZC, the MAPC can't waive that.

LANG said the MAPC can recommend modifications of a conditional use for City Council approval; however, they can't generally waive a code requirement, just recommend modification.

MOTION: To approve staff recommendation to deny.

MILLER STEVENS moved, **ANDERSON** seconded the motion.

SUBSTITUTE MOTION: To approve with the conditions recommended by staff on pages 6, 7, and 8 of the Staff Report.

MARNELL moved, **MITCHELL** seconded the motion, and it carried (7-5-1). **ANDERSON, DENNIS, FOSTER, HILLMAN, MILLER STEVENS** – No. **MCKAY** – Abstained.

DIRECTOR SCHLEGEL clarified that the action of the Planning Commission was final today unless there were appeals or protests.

MARNELL said he would like to request that the Advance Plans Committee research why these auto storage yards are considered auto salvage yards. He mentioned the previous case of wrecked vehicles stored by insurance companies, which he did not know such a business existed, but that it clearly was not a salvage yard. He said this business is extremely similar and is obviously not a salvage yard. He said he feels this was thrown into “*box # 7*” because that was as close as the code allows. He said he would like to see the UZC modified to include another definition, since this is not a one-time occurrence and this is the third case of this type within a year.

MOTION: To have the Advance Plans Committee look at the definition of Salvage Yards in the Unified Zoning Code.

MARNELL moved, **HILLMAN** seconded the motion, and it carried (12-1). **ANDERSON** – No.

MILLER STEVENS requested clarification that this was not a request to review the entire zoning code.

MARNELL clarified that he was interested mainly in the salvage yard issue; however, he said staff may come up with other issues. He said he was interested in a modifying the UZC not rewriting the entire code.

ANDERSON suggested asking staff to make a recommendation on how the issue should be handled to facilitate the matter instead of referring the issue to the Advance Plans Committee for recommendation.

CHAIRMAN DOWNING noted that historically the Advance Plans Committee has made recommendations.

SUBSTITUTE MOTION: To refer to staff for research and recommendation.

ANDERSON moved; motion died due to lack of a second.

ANDERSON commented this is why it takes so long to get things done around here.

The Metropolitan Area Planning Department informally adjourned at 3:45 p.m.

State of Kansas)
Sedgwick County) ^{ss}

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

Given under my hand and official seal this _____ day of _____, 2009.

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

(SEAL)