

**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**January 8, 2009**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, January 8, 2009, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Darrell Downing, Chair; G. Nelson Van Fleet, Vice Chair; Don Anderson; David Foster (in @1:33 P.M.); Bud Hentzen; Hoyt Hillman; John W. McKay, Jr.; Debra Miller Stevens and M.S. Mitchell. David Dennis; Michael Gisick; Bill Johnson; Ronald Marnell and Don Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Derrick Slocum, Associate Planner and Maryann Crockett, Recording Secretary.

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1. Approval of the December 18, 2008 MAPC meeting minutes:

**MOTION:** To approve the December 18, 2008 Minutes, as amended.

**MCKAY** moved, **MITCHELL** seconded the motion, and it carried (7-0-1).

**MILLER STEVENS** – Abstained.

**FOSTER** in @1:33 P.M.

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2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB 2008-99: One-Step Final Plat -- BULLOCH ADDITION**, located on the north side of Harry and west of Greenwich Road.

NOTE: The site has been approved for a zone change (ZON 2008-39) from SF-5 Single-Family Residential to NR Neighborhood Retail. Protective Overlay #222 was also approved for this site, addressing building height, permitted uses and density.

STAFF COMMENTS:

- A. Wichita Water Utilities Department advises that municipal services are available to serve the site. New construction on this lot will require the existing sewer service line to be reviewed (by Sewer Maintenance and Office of Central Inspection) and brought up to current City Code.
- 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 Engineering has approved the applicant's drainage plan subject to providing spot elevations and the floodplain delineation per elevation. A drainage reserve needs to be platted. County Engineering has received a drainage plan as requested and review has been completed.

- D. County Surveying requests a benchmark.
- E. County Surveying requests that monuments be shown.
- F. County Surveying requests a vicinity map on the plat.
- G. County Surveying requests a legend on the final plat.
- H. County Surveying advises that the label for the southeast corner of the southeast quarter needs to be corrected.
- I. The plat proposes one opening along Harry. Traffic Engineering has approved the access controls. The spelling of “opening” shall be corrected.
- J. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved Protective Overlay and its special conditions for development on this property.
- K. Effective January 14, 2009, the signature line for the County Clerk needs to be revised to reference “Kelly Arnold.”
- L. The year “2009” needs to replace “2008” within the signature blocks.
- M. On the final plat tracing, the MAPC signature block needs to reference “Darrell A. Downing” as Chairman.
- N. The spelling of Barbara O. Bulloch shall be corrected within the Notary Certificate.
- O. The platting binder indicates a party holding a mortgage on the site. This party’s name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- P. The platlor’s text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. 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.)
- R. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- S. 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.

- T. 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.
- U. 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.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. 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](mailto: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, **MCKAY** seconded the motion, and it carried (9-0).

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**2-2. SUB 2008-100: One-Step Final Plat -- DOUG ECK 2ND ADDITION**, located at the northeast corner of 231st Street West and 45th Street North

NOTE: This is unplatted property located in the County. It is in an area designated as "Rural" by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Andale Zoning Area of Influence.

**STAFF COMMENTS:**

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval.
- 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. County Engineering has approved the applicant's drainage plan. The floodplain notation needs to be included on the plat.
- D. The plat denotes two openings along 45<sup>th</sup> St North and one opening along 231<sup>st</sup> St West. County Engineering has required the access openings to be 400 feet apart.

- E. The plat should meet the requirements of the Sedgwick County Service Drive Code, per Sedgwick County Fire Department.
- F. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineer (USACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- G. The year "2009" needs to replace "2008" within the signature blocks.
- H. 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.
- I. 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.
- 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](mailto: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, **MCKAY** seconded the motion, and it carried (9-0).

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**3. PUBLIC HEARING – VACATION ITEMS**

**3-1. VAC2008-38: City request to vacate a portion of a platted setback.**

**OWNER/APPLICANT:** Price Suchan Group, LLC, c/o William Suchan

**LEGAL DESCRIPTION:** A portion of the platted 35-foot setback that runs parallel to the west lot line of Lot 1, TKC Addition, Wichita, Sedgwick County, Kansas, and St. Francis Avenue

**LOCATION:** Generally located on the east side of Saint Francis Avenue and on the north side of Pawnee Avenue (WCC #III)

**REASON FOR REQUEST:** Additional space for development

**CURRENT ZONING:** Subject property and adjacent western property are zoned LC Limited Commercial (“LC”). Abutting and adjacent northern, eastern and western properties are zoned TF-3 Two-family Residential (“TF-3”). Adjacent southern properties are zoned GC General Commercial (“GC”) and LI Limited Industrial (“LI”).

The applicant proposes to vacate the east 20 feet of the platted 35-foot street side yard setback, making a 15-foot street side yard setback. This setback is located along St Francis Avenue, which is the short side of the subject key corner lot. Per the Unified Zoning Code (UZC, Art.III, Sec.III-E, e (6)), a key corner lot recorded after March 25, 1996, shall have a front yard setback along all street exposures. The UZC’s minimum front yard setback for the LC zoning district is 20 feet. However, The TKC Addition was recorded with the Register of Deeds March 13, 1974, thus the request for the UZC’s minimum 15- foot street side yard setback for the LC zoned lot. Per the applicant’s exhibit (prepared by Skinner Design Studios, Landscape Architecture & Planning), the requested 15-foot setback would be in line with the abutting northern TF-3 zoned property’s 25-foot front yard setback along St. Francis Avenue. This is the result of the subject site being 10 feet narrower along St Francis than the abutting TF-3 property; see staff’s utility map showing 80-foot and 60-foot ROWs along the just mentioned properties. There are no platted easements within the platted setback. There are no utilities, manholes, sewer or water lines within the described portion of the platted setback.

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 portion of the platted setback.

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

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time December 18, 2008, 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 above-described portion of the platted setback and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Considerations (but not limited to) associated with the request to vacate the described portion of the platted setback have been identified, therefore, the vacation of the portion of the platted setback described in the petition should be approved with conditions:

- (1) Vacate the east 20 feet of the platted 35-foot setback that runs parallel to the west lot line of Lot 1, TKC Addition, Wichita, Sedgwick County, Kansas, and St. Francis Avenue. The approved legal description of the vacated portion of the platted setback, will only be where the proposed expansion of the existing building will be located, this will preserve the platted 35-foot setback that runs parallel to the south lot line of Lot 1, TKC Addition, Wichita, Sedgwick County, Kansas, and Pawnee Avenue. Send the approved legal description to Planning on a Word document, via e-mail.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the east 20 feet of the platted 35-foot setback that runs parallel to the west lot line of Lot 1, TKC Addition, Wichita, Sedgwick County, Kansas, and St. Francis Avenue. The approved legal description of the vacated portion of the platted setback, will only be where the proposed expansion of the existing building will be located, this will preserve the platted 35-foot setback that runs parallel to the south lot line of Lot 1, TKC Addition, Wichita, Sedgwick County,

Kansas, and Pawnee Avenue. Send the approved legal description to Planning on a Word document, via e-mail.

- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

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

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**PUBLIC HEARINGS**

4. **Case No.: ZON2008-71** - W.G. Enterprises, LLC (owner/applicant); W.T. Farha (agent) request city zone change from TF-3 Two-family Residential and GO General Office to LC Limited Commercial on property described as:

The East 18.75 feet of Lots 1, 3, 5, 7, 9 and 11 and the East 18.75' of the North 20 feet of Lot 13, on Dellrose Avenue AND Lots 2, 4, 6, 8, 20, 13, 14, 16, 18 and 20, on Oliver Avenue, all in East Lawn Second Addition to Wichita, Kansas, Sedgwick County, Kansas EXCEPT Beginning at the Northeast corner of Lot 2, on Oliver Avenue, East Lawn Second Addition to Wichita, Kansas, Sedgwick County, Kansas; thence S 00 degrees 56'58" E, 25.00 feet along the East line of said Lot 2, said Addition; thence N 27 degrees 08'33" W, 27.51 feet to a point lying on the North line of said Lot 2; thence N 88 degrees 56'12" E, 12.50 feet along said North line to the point of beginning. Generally located south of Central Avenue, on the west side of Oliver Street.

**BACKGROUND:** The applicant is requesting a zone change from GO General Office ("GO") and TF-3 Two-family Residential ("TF-3") (Lots 12, 14, 16, 18, 20, on Oliver Avenue, and the east 18.75 feet of lot 11 and the east 18.75 feet and north 20 feet of Lot 13, on Dellrose Avenue, all in East Lawn Addition, Wichita, Sedgwick County, Kansas) to LC Limited Commercial ("LC"). The application area contains approximately 0.50 acre with 125 feet of frontage located along Oliver Street, less than one block south of Central Avenue. The subject site is currently developed as a parking lot serving the retail use abutting the north side of the application area.

The site is developed as a parking lot; the entire lot is paved, and used for parking and traffic circulation for the businesses that abut the site to the north. There are approximately thirty parking stalls, with what appears to be one handicap accessible stall, located at the rear of the building.

Properties west of the site, across an alley, are zoned SF-5 Single-family Residential and TF-3, and are developed with single-family residences and office uses. Property owned by the applicant, zoned LC, abuts the north side of the application area, and is developed with retail uses. Property to the south is zoned TF-3 and is developed with single-family residential uses. The property east of the subjects site, across Oliver Street, is zoned LC and is developed with office and retail uses.

Any development on the subject property will be required to meet access management regulations, all compatibility setbacks, height, noise and design standards, landscaping, screening and any other applicable codes and development standards.

**CASE HISTORY:** The subject properties are platted as Lots 12, 14, 16, 18, 20, on Oliver Avenue , and the east 18.75 feet of lot 11 and the east 18.75 feet and north 20 feet of Lot 13, on Dellrose Avenue, East Lawn Addition. The East Lawn Addition was recorded with the Register of Deeds January 12, 1927. In 1958, BZA1-58 was approved for Lots 18 and 20 to allow the operation of a ceramic school or art studio with occasional sales to the general public.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC	Strip Store
SOUTH:	TF-3	Single-family Residential
EAST:	LC	Strip Store/Office
WEST:	SF-5/TF-3	Office/Single-family Residential

**PUBLIC SERVICES:** All public services are available at the subject site. Central Avenue is a four-lane principal arterial with 40,801 Average Daily Traffic (ADTs). Oliver Avenue is a four-lane minor arterial with 31,853 ADTs. The subject site currently has access drives off of both Central and Oliver, by virtue of the applicant's ownership.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies the south part of this site as appropriate for "urban residential" type uses and the north part of the site appropriate for "local commercial" type uses. The "urban residential" category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The "local commercial" category The "Wichita Land Use Guide, as amended "05/26" of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies the application area as appropriate for "local commercial," which reflects the application area's site's development.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zoning Code (UZC) requires compliance with compatibility setbacks between non-residential and residential zoning, lighting, screening, and landscaping. Uses appropriate in the local commercial designation are local in their customer base and include: commercial, office, personal services, medical, auto repair, grocery stores, florist shops, service stations, restaurants and on a limited presence basis mini-storage warehousing and small scale light manufacturing. The requested LC zoning and the uses permitted in it would be classified as "local commercial" by the Guide. However, the subject site is bordered to the north and east, by properties categorized as "local commercial" on the land use guide and commercial and industrial uses are common at major intersections.

**RECOMMENDATION:** The subject site seems to have been used for freestanding retail and parking since the 1960s, the application will bring the area into long overdue compliance. The proposed zone change is in conformance with the recommended Commercial Locational guidelines of the Plan.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request for LC zoning on Lots 12, 14, 16, 18, 20, on Oliver Avenue, and the east 18.75 feet of lot 11 and the east 18.75 feet and north 20 feet of Lot 13, on Dellrose Avenue, all in East Lawn Addition be **APPROVED**, with the contingent dedication of 20-foot of ROW along the application area's site where it fronts Central Avenue, the contingent dedication of 30-foot of ROW along the application area's site where it fronts Oliver Street, compliance with the UZC's compatibility setbacks, screening, lighting, access and landscaping and subject to the provisions of a Protective Overlay:

- 1) Building signs are not allowed to face towards the south and west property lines.
- 2) Portable, billboards and off-site signs are not permitted.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Properties west of the site, across an alley, are zoned SF-5 Single-family Residential and TF-3, and are developed with single-family residences and office uses. Property owned by the applicant, zoned LC, abuts the north side of the application area, and is developed with retail uses. Property to the south is zoned TF-3, and is developed with single-family residential uses. The property east of the subjects site, across Oliver Street, is zoned LC, and is developed with office and retail uses.
2. **The suitability of the subject property for the uses to which it has been restricted:** Approval of LC zoning would introduce some uses not in character with adjacent existing residential uses. Commercial uses generate more average daily traffic; introduce larger signage and more lighting than is found in typical residential areas putting increased pressure on existing nearby residences.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed LC zoning would allow similar types of development as already established north and east of the area. The implementation of the standards of the Unified Zoning Code over the whole site would limit the adverse impact on the adjacent residential developments.
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 identifies the south part of this site as appropriate for "urban residential" type uses and the north part of the site appropriate for "local commercial" type uses. The "urban residential" category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The "local commercial" category The "Wichita Land Use Guide, as amended "05/26" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the application area as appropriate for "local commercial", which reflects the application area's site's development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zoning Code (UZC) requires compliance with compatibility setbacks between non-residential and residential zoning, lighting, screening, and landscaping. Uses appropriate in the local commercial designation are local in their customer base and include: commercial, office, personal services, medical, auto repair, grocery stores, florist shops, service stations, restaurants and on a limited presence basis mini-storage

warehousing and small scale light manufacturing. The requested LC zoning and the uses permitted in it would be classified as “local commercial” by the Guide. However, the subject site is bordered to the north and east, by properties categorized as “local commercial” on the land use guide and commercial and industrial uses are common at major intersections.

5. Impact of the proposed development on community facilities: Provided that drainage and traffic access policies are met, community facilities should not be impacted. Other usually provided municipal services are available.

**DERRICK SLOCUM**, Planning Staff presented the Staff Report. He reported that DAB II approved the application without the contingent right-of-way dedication. In addition, they requested that the Protective Overlay include a provision that Payday Loans not be allowed to relocate to the site.

**FOSTER** clarified that this was one parcel with one owner.

**SLOCUM** said that was correct.

**MITCHELL** asked what the purpose of the zone change was.

**SLOCUM** said to bring the parking into conformance with the zoning.

**HILLMAN** asked about the provision of no signs facing south.

**SLOCUM** clarified that was no *building* signs facing south.

**W.G. FARHA, APPLICANT AND PROPERTY OWNER, 8100 E. 22<sup>ND</sup> NORTH, 1700-2** said they had previously declined to dedicate right-of-ways requested by the City and agreed with the DAB that this be taken out of the requirements for approval of the zoning request. He said the area has been used as commercial for 50 years and they applied for this zoning change to get the area into conformance.

**HENTZEN** asked if the City has made any offers for land they want to take from him.

**FARHA** said no deal has been offered by the City.

**MOTION:** To approve subject to staff recommendation with the removal of the right-of-way dedication.

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

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5. **Case No.: CUP2008-52** – Nuot Nguyen and Ly Ngoc Thi (owner); Mario Quiroz (applicant); Baughman Company P.A., c/o Russ Ewy (agent) Request DP-18 Amendment #3 to allow a night club/drinking establishment on property zoned LC Limited Commercial.

Lot 1, W. F. Farha 3rd Addition, Wichita, Sedgwick County, Kansas, generally located north of 21st Street North and east of Somerset Avenue.

**BACKGROUND:** The applicant seeks a CUP amendment to allow a drinking establishment and nightclub within an existing restaurant located at 1580 west 21<sup>st</sup> Street North. The applicant wishes to use 5,000 square feet of the existing restaurant as a nightclub and private rental facility, this space is limited

by fire code to a 300 person occupancy. The 5,000 square feet of designated nightclub space is located within a larger 10,600 square foot building. DP-18 does not list nightclubs or drinking establishments as permitted uses for this site. Also, the site is located within 200 feet of a church and multi-family residential zoning; these factors require the applicant to request a CUP amendment for a drinking establishment and nightclub.

If this request is approved, the current limitation on the amount of alcohol that can be sold on this site by virtue of the current Drinking Establishment–Restaurant (DE-R) license would be removed. The DE-R license requires that 50% of gross revenue be from food sales. Without the DE-R license restriction, there are no restrictions on the volume of alcohol that could be sold. Establishments that sell alcohol and provide entertainment/dancing can be good neighbors to other businesses, but they can also become nuisances that generate excessive noise and nuisance activity.

A “nightclub in the city” is defined by the *Unified Zoning Code* as an establishment that provides entertainment, which may include the provision of dancing by employees or patrons, and where alcoholic beverages are offered to the public or its members, and which may or may not serve food. “Nightclub in the city” is a use permitted by right in the LC Limited Commercial (“LC”) zoning district except when it is located within 200 feet of a church or place of worship, public park, school or residential zoning district. A Conditional Use (or an amendment to a Community Unit Plan) is required if a nightclub is located within 200 feet of the aforementioned uses or zoning districts.

The existing business is within a shopping center outbuilding, located on the west side of the property, northeast of the Somerset Avenue and 21<sup>st</sup> Street intersection. The site is within Parcel 1 of the River Bend Shopping Center Community Unit Plan (CUP), DP-18. The applicant’s property is zoned LC, subject to the conditions contained in DP-18, including the development standards for Parcel 1. Uses permitted in Parcel 1 are restricted to: shopping center, department store, restaurant, offices and other similar uses permitted in LC zoning. Existing businesses located in the CUP include a gas station/tire store, a bus station, a retail strip center, a bingo hall and a vacant restaurant.

North and east of this property is SF-5 Single-family Residential (“SF-5”) and LC zoning with single family residences to the north and east, and commercial uses to the east. South of the site, on the south side of 21<sup>st</sup> Street, is GO General Office (“GO”) zoning and a medical office building. West of the site is B Multi-family Residential (“B”) and GO zoning with a church and an apartment complex.

A previous night club within this same shopping center generated law enforcement problems several years ago. In 2004, a different applicant requested an amendment to this same CUP for a drinking establishment and nightclub, that request was denied and generated significant neighborhood opposition. It would be important to note that the previous nightclub and the previously denied application were on the east side of the shopping center, with the club and parking approximately 100 feet from single-family residences. This current request is at a different location within the center; the building is over 280 feet from single-family residences to the north, and over 475 feet from residences to the east, with a commercial strip center building between this site and all single-family residences. The proposed nightclub building is over 350 feet from the nearest apartment building, and over 200 feet from the church building to the west. However, the application area parking is within 200 feet of the apartment and church properties to the west.

**CASE HISTORY:** The W.F. Farha 3<sup>rd</sup> Addition was approved in 1966. DP-18 was approved in 1984. Currently 1530 west 21<sup>st</sup> Street has “drinking establishment-restaurant” (DE-R) license.

**ADJACENT ZONING AND LAND USE:**

NORTH: SF-5 Residential

SOUTH: GO Medical office  
EAST: SF-5, LC Residential, office and retail  
WEST: SF-5, GO, B Church and multi-family residential

**PUBLIC SERVICES:** At this location 21<sup>st</sup> Street North is a four-lane arterial with a central turn lane. This section of 21<sup>st</sup> carries 17,316 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 site is within the adopted *21<sup>st</sup> Street North Corridor Redevelopment Plan*. The *21<sup>st</sup> Street North Corridor Redevelopment Plan* designates this shopping center as a “Commercial Mixed” area, which would encourage retail, office and restaurant uses mixed with medium density residential. 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:** Night clubs within this shopping center had negative impacts on the surrounding neighborhood in the past. This application is within a building further removed from single-family neighborhoods, and within a limited amount of space. Appropriate conditions limiting the size of the establishment and tying it to a restaurant will keep the proposed nightclub at a neighborhood scale, and mitigate any potential negative effects on the residential neighborhood. This application has generated only one phone call in opposition, possibly demonstrating neighborhood acceptance of this proposal. Likewise, several business and neighborhood group’s submitted letters of support for this application, see attached. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. DP-18 Parcel 1 item I. shall be amended to add Amendment #3: “One drinking establishment/nightclub shall be permitted at 1530 W. 21<sup>st</sup> Street North. The drinking establishment/nightclub shall be attached to a restaurant and under the same ownership as the restaurant. The nightclub shall not exceed 5,000 square feet in size, shall not exceed a 300-person occupancy, and shall conform to an approved site plan.”
2. The applicant shall submit a site plan, to be approved by Planning Staff, which demonstrates a designated nightclub parking area of 150 spaces which shall not be permitted within 160 feet of the east property line. The nightclub shall be responsible to enforce the designated parking area, and shall conform to all other codes and regulations.
3. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** North and east of this property is SF-5 and LC zoning with single family residences to the north and east, and commercial uses to the east. South of the site, on the south side of 21<sup>st</sup> Street, is GO zoning and a medical office building. West of the site is B and GO zoning with a church and an apartment complex. If the request is limited to the proposed conditions, a neighborhood scale nightclub buffered from single-family residences could be compatible with the surrounding neighborhood.

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-18. Uses permitted on the site are: shopping center, department store, restaurant, offices and other similar uses permitted in LC zoning. 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: Currently the sale of alcoholic beverages is limited by its DE-R status; approval of this request would remove this limitation. The requested CUP amendment would generate traffic at later hours than the current restaurant use.
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 site is within the adopted *21<sup>st</sup> Street North Corridor Redevelopment Plan*. The *21<sup>st</sup> Street North Corridor Redevelopment Plan* designates this shopping center as a “Commercial Mixed” area, which would encourage retail, office and restaurant uses mixed with medium density residential. 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 could result in an increased demand for police services. The proposed CUP amendment could also result in increased traffic demand at later hours.

**JESS MCNEELY**, Planning Staff presented the Staff Report. He reported that DAB VI recommended unanimous approval of the application; however, one neighbor spoke against the request. He added that the owners of the apartment complex were also against the request, but several neighborhood associations and businesses were in favor of the request. He reminded the Commission that any CUP amendment runs with the land.

**MILLER STEVENS** asked about the church to the west and if it was within 200 feet of the site.

**MCNEELY** commented that the church is zoned General Office because of an application for a day-care center approved several years ago and clarified that it is within 200 feet of the CUP.

**RUSS EWY, BAUGHMAN COMPANY, AGENT FOR THE APPLICANT** said the applicant was also present to answer any questions. He referred the Commission to the agenda, which included a letter of support from the Church. He commented that he would wait for rebuttal to address any concerns. He also mentioned that this application received unanimous support from DAB VI. He added that there were a number of fundamental differences between this application and the application that was denied in 2004 including scale of use, as well as being tied into another business use. He mentioned issues touched upon at the DAB meeting including the new proposed code changes concerning regulating and enforcement at night clubs. He said his client has a working relationship with the Wichita Police Department (WPD) and that the beat officer actually spoke on behalf of the applicant at the DAB meeting. He mentioned security both inside and outside the nightclub and how the new regulations were a very structured system, with greater penalties that they will go a long way to teaching club owners how to manage property and preserve neighborhood peace.

**MILLER STEVENS** commented that the ordinance **EWY** referred to has not been passed so the applicant would not fall under the provisions of that ordinance.

**EWY** said that was correct.

**BRANDY ALCORN, REPRESENTING PACIFIC PROPERTIES** said they have a multi-family housing property directly across the street from this location consisting of 230 multi-family units, in addition to 293 units at Twin Lakes Apartments located less than one mile from this location. She referred Commission members to several pictures she took earlier today of the wall behind the shopping center where the club is being proposed, which was covered with graffiti. She commented that it was obvious from the pictures that the area has never been taken care of by the property owner. She said the pictures just demonstrate some of the challenges they already face in the neighborhood with graffiti. She mentioned one of the letters of support that said they were comfortable that the applicant would be able to provide security to control 300 people and mentioned that there was not enough control with the other nightclub that had been located there. She said they are very concerned about keeping a nice neighborhood for their residents. She said unfortunately, they did not find out about the application until yesterday. She said they will be submitting a petition within 14 days with numerous names who want to be involved in not letting this happen. She concluded by mentioning that the church, named Breakthrough Ministries, was geared towards drug and alcohol rehabilitation and she wondered about a bar being located across the street. She also mentioned that there was a bus station located in the same building as the proposed nightclub and that was also a concern.

**DELORA DONAVON, 559 FARRELL DRIVE, PRESIDENT, NORTH RIVERSIDE NEIGHBORHOOD ASSOCIATION** said they have been having dialogue with the applicant for several months concerning the proposal. She said this has been discussed at neighborhood and DAB meetings, which are open for everyone to go to. She said from her standpoint and her discussions with the applicant, she would like to see this higher class club opened in the neighborhood rather than to wait for the next person to open a "hip hop" joint. She commented that there was graffiti in Minisa Park, along the bike path and other areas and she doesn't think graffiti has anything to do with the applicant's proposal for a nightclub.

**HANK BLASE, 2302 NORTH HOOD** said he has an office across the street to the East of the application area. He said at the DAB meeting there was concern that the sign required to be placed at the proposed location was initially placed but then removed from the site and never replaced and that the sign had not been up for the required period of time. He said the sign was never replaced so there has been a lack of information going to the neighborhood for people who are concerned and want to come forward and express their opinion. He said the regulation about nightclubs that was mentioned is a proposed regulation that has not gone into effect yet, and therefore, has no control over anything. He referred to the comments from the North Riverside Association representative and said it was interesting to note the comments of the President of the North Riverside Association in 2004, Rosalee Bradley, which specifically referred to overconsumption of alcohol and consumption of alcohol outside the building at the Latino Boom. He said she also mentioned excessive loud noise, trash in the neighborhood, and damage to cars and properties as patrons from the club cut through the neighborhood. He commented that zoning changes go with the property and not with the client, and once the zone change is granted; there is nothing anyone can do to prevent this from becoming another Latino Boom.

He mentioned the letters attached to the Staff Report commenting on what a good operator the applicant is. He asked what happens when this owner leaves and a hip hop joint comes in. He said there is no control and that there should be some. He commented that 2004 statistics provided by the WPD showed that there were 54 WPD reports in an 18-month period at the location. He said the past four years have

been a period of peace and tranquility in the neighborhood. He said his point is that the recommendation for approval of this application has been based on this applicant, not the property or the impact it will have on the neighborhood for all time. He said no one has found that this will improve the neighborhood. He said the Commission has the ability to make the recommendation that the applicable laws be changed to allow amendments to CUP's to authorize uses based on the conduct and character of the applicant rather than just the property site. He said that way, a new operator and their track record would come under scrutiny. He said the Commission could at least impose a condition on the application and approval of the amendment that will revoke the amendment in case that say "*X number of WPD reports occur in Y amount of time.*" He asked for something that will retain some kind of control over what happens as a result of the operation. He concluded by saying that dance clubs and night clubs are not allowed within 200 feet of residential areas for a good reason; to protect the neighborhoods. He asked the Commission to protect and strengthen the neighborhood.

**RUSS EWY, BAUGHMAN COMPANY** said property owners within a 500-foot radius of the property were notified of the proposal and added that over 90 property owners were sent notices so he does not believe that inadequate notices were given on the project. He also stated that he thought it was unfair to tie graffiti in the neighborhood to a particular land use. He added that the implication of increased gang activity and vandalism is also a little unfair. He said Planning Staff did see the sign posted at the location. Referring to the past comments of the former North Riverside Association President and how they reflect on the current application, he said it shows how people can be objective and can change their mind. He said the proposed land use under the umbrella of zoning is harmonious with surrounding land and will be a good asset to the neighborhood in general. He concluded by mentioning the support of the WPD and stated that **MR. QUIROZ** was present to answer any questions on how he has integrated his club plan with the WPD.

**MITCHELL** asked if the restaurant at the location serves liquor today.

**EWY** said yes.

**HILLMAN** asked if it were possible to tie a conditional use to the conduct and character of the operator; the number of WPD reports of problems in the area; or some other tie that might go with the operator, so if a sale were to take place or something change, the approval process would automatically be negated.

**JOE ALLEN LANG, CITY LAW DEPARTMENT** commented that the application is being presented as a CUP amendment rather than a conditional use permit. He said with a conditional use permit the time could be limited, or it could be reviewed upon certain events; however, that is not normally done with a CUP or other zoning, which is based on land use. He said he thought something could be crafted that would require review; but he believes that needs to be done in the context of a conditional use application.

**HILLMAN** asked if that could be done at this meeting or if the Commission needed to move to defer the item, have it reconstructed as a conditional use request and brought back to the MAPC.

**DIRECTOR SCHLEGEL** said if the Commission wanted to attach that type of condition to an approval of the site, deferral would be needed to give staff time to work with the applicant to come up with some type of standard. He said he doesn't know what the standard might be, but staff would need time to talk to the applicant and his agent.

**HILLMAN** asked if the applicant would be interested in this alternative and if he would be willing to work with staff to make this happen.

**EWY** said the applicant has demonstrated his willingness to work with the City and that he would let him address that question. He said with most Conditional uses if any of the terms are found to be in violation, the conditional use is revoked. He said he does not know if a CUP has that same language. He said the question is what would that actually look like and how would those terms be defined. He asked how you draw a fair line with that type of enforcement. He said the proposed code amendments which are currently being written by WPD do spell out penalties. He said he could ask his applicant to take a two-week deferral.

**MARIO QUIROZ, 1530 WEST 21<sup>ST</sup> STREET NORTH** said he is trying to run a clean and good place in the area. He said there is graffiti in all the neighborhood area and that big businesses are moving out. He said he has decided to stay and rebuild his neighborhood. He said they opened last April with a cabaret license so they can have different shows and performances for the entire community. He said his restaurant has received recognition (3 out of 4 stars) from the Wichita Eagle. He said he has been in the restaurant business the last eight years and has also been involved with the community. He said he is trying to work with the community and the neighborhood to try to establish a good way of living. He said he doesn't want to make a bar with a bad reputation. He said this is a new era and a new segment and he wants to bring a different atmosphere to his neighborhood and that all he is asking is a chance to have a decent place. He said he has been working with WPD to establish a "best practices" establishment. He concluded by saying that he has the support of the WPD, the surrounding neighborhood associations and the church and that he has done his homework and talked to people and opened doors in support of his project. He added that he has been learning a lot. He offered to answer any questions.

#### **TAPE 1, SIDE 2**

**HILLMAN** asked if he was the sole owner of the facility.

**QUIROZ** said he and a partner have a corporation and that they also own LeMesa Mexican Restaurant.

**HILLMAN** asked if he would be willing to work with staff and reform the request into a conditional use and re-apply.

**EWY** said they wouldn't go so far as to say that. He said that could take up to three more months and creates a whole other class of problems from a zoning procedure standpoint. He said he believes they can get where they need to be through the CUP amendment.

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

**ANDERSON** moved, **MITCHELL** seconded the motion, and it carried (8-1).

**FOSTER** - No.

**MITCHELL** said he would like to make a statement on how the proposed changes in zoning and CUP's are being handled. He said he was at the DAB meeting Monday night and pleasantly surprised to hear most of the testimony in favor of the applicant. He said the DAB members voted unanimously to approve, which is very unusual. He said he doesn't want to see zoning cases decided on a popularity contest and that is exactly what went on that night. He said although the outcome was good, that is not the way zoning cases ought to be considered or voted on. He said he would not support any move to make zoning cases specific to the applicant.

**MCKAY** asked if the applicant would fall under the new ordinance. He asked if the ordinance would be retroactive, or would the applicant be grandfathered in.

**LANG** said he didn't know the specific answer to that question and said he believes that issue will be addressed when the applicant's license comes up for renewal.

**SCOTT KNEBEL**, Planning Staff said he has been working with WPD on the licensing ordinance. He said as the ordinance is proposed today, people would be subject to the new requirements when they come in to renew their license.

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6. **Case No.: CON2008-62** - Monte and Treisa Reese Request County Conditional use to permit an accessory apartment at 1631 South 231st Street West on property described as:

The East half of the East half of the Northeast Quarter, Except the North 60 feet for highway 54, and Except the South 1290.69 feet, Section 35, Township 27, Range 3 West of the 6th P.M., Sedgwick County, Kansas. Generally located southwest corner of 231st Street West and West Kellogg.

**BACKGROUND:** The applicant is requesting a Conditional Use to allow an accessory apartment on a RR Rural Residential ("RR") zoned 19.04-acre unplatted tract, located at the southwest corner of South 231<sup>st</sup> Street West; 1631 South 231<sup>st</sup> Street West. The site has an existing brick single-family residence (3,708 square feet, per county records) that takes its access off of 231<sup>st</sup> Street, 525 feet south of U.S. 54. The applicant proposes to locate the accessory apartment 450 feet west of 231<sup>st</sup> Street and over 525 feet south of U.S. 54 (a little south and west of the site's principal structure). The site plan shows a drive extended from the existing driveway to serve the proposed accessory apartment. The site has a creek that creates a significant drainage way located along the northern and eastern side of the tract.

All surrounding property is zoned RR Rural Residential and is used either for large-lot residences or farmland. The character of the area is suburban residential. A divided-four-lane highway abuts the property to the north. A sand and gravel section-line road abuts the property to the east. There is a large-lot residence located to the south. The land to the west is farm ground. The site is heavily screened by trees, as are some of the other lots in the immediate area.

The Unified Zoning Code (UZC) requires a "Conditional Use" approval for an accessory apartment. The UZC's Conditional Use requirements for accessory apartments are as follows:

- (a) A maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling.
- (b) The appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood.
- (c) The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium.
- (d) The water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

If this request is approved, application for a building permit may trigger a requirement for platting the property. County Code Enforcement will make that determination.

**CASE HISTORY:** County records indicate that the current home on the site was built in 2000.

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	U.S. 54, Large-lot single-family residential
SOUTH:	RR	Large-lot single-family residential
EAST:	RR	Large-lot single-family residential
WEST:	RR	Large-lot single-family residential, farm

**PUBLIC SERVICES:** Sewer service is provided by an on-site lagoon. Water service is apparently provided by on-site well. 231<sup>st</sup> Street is an unpaved sand and gravel road.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “rural areas.” The rural area category includes land that is located beyond projected 2030 urban growth areas; in this case the site is just west of the City of Goddard’s growth area. Land assigned the rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than agricultural uses commonly found in Sedgwick County, and predominately larger lot residential uses utilizing individual or community water and sewer services. The UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling’s hook-up.

**RECOMMENDATION:** Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions being completed within a year:

1. The accessory apartment shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC) for accessory apartments.
2. The site will be generally developed as shown on an approved site plan. The applicant and the development shall obtain and conform to all applicable permits and regulations, including but not limited to building, health, and zoning.
3. The accessory apartment shall be completed and capable of being legally inhabited within one year of the date of final approval or the Conditional Use shall be null and void.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned RR Rural Residential and is used either for large-lot residences or farmland. The character of the area is suburban residential. A divided-four-lane highway abuts the property to the north. A sand and gravel section-line road abuts the property to the east. There is a large-lot residence located to the south. The land to the west is farm ground. The site is heavily screened by trees, as are some of the other lots in the immediate area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR, which accommodates agricultural uses, low-density single-family residential development and complementary land uses. The site is developed with a single-family residence and could continue to be used as it is.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed accessory apartment will add a second dwelling unit to a nearly 20-acre lot that is located in an area where larger-lots are the norm; however the lot is of sufficient size and adequately screened to accommodate a second dwelling without detrimentally impacting neighbors.
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 identifies this site as appropriate for “rural areas.” The rural area category includes land that is located beyond projected 2030 urban growth areas. In this case the site is located just outside (west side of 231<sup>st</sup> Street) the City of Goddard growth area. Land assigned the rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than agricultural uses commonly found in Sedgwick County, and predominately larger lot residential uses utilizing individual or community water and sewer services. The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling’s hook-up.
5. Impact of the proposed development on community facilities: If developed in compliance with the recommended conditions of approval, existing community facilities are adequate.

DALE MILLER, Planning Staff presented the Staff Report.

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

HILLMAN moved, MILLER STEVENS seconded the motion, and it carried (8-0-1).  
MITCHELL – No.

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7. **Case No.: CON2008-63** – Howard Hancock (applicant); Bob Kaplan (agent) Request City Conditional use for outdoor vehicle and equipment sales.

Lots 45 and 47 of the Jones Subdivision in Chautauqua Addition, Wichita, Sedgwick County, Kansas generally located at the northwest corner of Hillside Avenue and 1st Street.

**BACKGROUND:** The applicant is requesting a Conditional Use to allow “outdoor vehicle and equipment sales” on Lots 45 and 47, Jones Subdivision in Chautauqua Addition (site), which are zoned “LC” Limited Commercial. The site is located at the northwest corner of Hillside Avenue and 1<sup>st</sup> Street. The site was owned by the City of Wichita (2007), and had a vacant free-standing business located on it. The applicant bought the site (which had been scraped clean by the City), and paved it for a parking lot. The Office of Central Inspection (OCI) cited the applicant for constructing the parking lot without a permit. OCI notified the applicant that the parking lot did not meet ADA standards, and that he needed to obtain an approved landscape plan before a building permit could be issued to bring the parking lot into compliance. The notice of violations was issued in April of 2008, and, as of the writing of this report, the lot is not in compliance. The applicant currently owns a LC zoned car sales lot (CON2005-00002, ZON2005-26) developed with a “vehicle repair, limited” shop (permitted by-right in LC zoning) located south of the site, across Hillside. The applicant proposes to expand the sale of pre-owned cars and light trucks from his current site onto the subject site, which is separated from the existing car sales lot by 1<sup>st</sup>

Street. Per the Unified Zoning Code (UZC, Art.III, Sec.III-D, 6(x)), “outdoor vehicle and equipment sales” may be permitted with a Conditional Use in the LC zoning district.

TF-3 Two-family Residential (“TF-3”) zoned single-family residences (built 1910 -1920s) are located west of the subject site, one of which is owned by the applicant. These homes are separated from the subject site by a 10-foot wide platted alley. There is a clay pipe sewer line in the alley, which was installed in 1911. A cured in-place liner was installed in 2004. Development located to the south of the site, across 1<sup>st</sup> Street and Hillside includes TF-3 zoned single-family residences (1915-1930s), duplexes (1984) and MF-29 Multifamily Residential (“MF-29”) zoned apartments (1984). The applicant owns the residence located immediately west of his existing repair and sales center. Also located south of the subject site, across 1<sup>st</sup>, are the LC zoned applicant’s garage and car sales lot, a grocery store, an Ace Hardware store, a dentist office, several free standing single-story retail businesses and a small fast food restaurant with a drive through window. There is also a GC General Commercial (“GC”) zoned car sales lot on the northwest corner of Douglas Avenue and Hillside. A car sales lot is permitted by right in the GC zoning district; UZC, Art.III, Sec.III-D, 6(hh). This GC zoned car sales lot used to be gas station, and was operating prior to the applicant’s current and past Conditional Use requests for vehicle sales. The properties located east of the subject site, across Hillside, are developed as an LC zoned apartment, a B Multi-family Residential (“B”) zoned office and a GO General Office (“GO”) zoned vet clinic and medical office. Property abutting the north side of the site is zoned LC, and is developed as a small retail shopping strip housing a liquor store, self-serve laundry and other retail. There is small, GO zoned medical office located north of the LC zoned small retail shopping strip.

The applicant’s site plan (exhibit #1) shows the existing paved lot with an existing drive onto 1<sup>st</sup> Street, cedar fence along the north and west sides and a two-inch rail barrier around its street frontage. The site plan shows no landscaping, lighting, or proposed signage. A Warranty Deed, executed as part of the sale of the subject site, also retained 30 feet of right-of-way along the site’s Hillside frontage; Film/Page 28964426, recorded 04-02-2008, exhibit #2. This retention of 30 feet of right-of-way reduced the subject site’s depth to 100 feet. The site plan shows the site to be 104 feet deep, but notes that all dimensions are approximate and should be verified by a survey; it appears that the paved lot encroaches into the Hillside Avenue right-of-way.

**CASE HISTORY:** As noted above, the subject property is platted as Lots 45 and 47, Jones Subdivision in Chautauqua Addition, which was recorded with the Register of Deeds March 9, 1887. The site was owned by the City of Wichita and had a vacant free standing business located on it. The City approved the sale of the site (which had been scraped clean by the City) to the applicant at their February 26, 2008, meeting. The minutes from that meeting (exhibit #3) notes that the applicant proposed to use the site for additional parking (not a car sales lot) for his existing business (limited car repair and car sales). The Warranty Deed (Film/Page 28964426, recorded 04-02-2008), prohibits certain uses on the site, but car sales was not one of the prohibited uses; see exhibit #2. The Warranty Deed also retained 30 feet of right-of-way along the site’s Hillside frontage. Subsequently, the applicant paved over the site, put up the cedar fence and the two-inch pipe rail barrier for a parking lot. OCI cited the applicant for constructing the parking lot without a permit. OCI notified the applicant that he needed to obtain an approved landscape plan, and the site needs to be brought into compliance with ADA requirements, access control and other City Standards before a building permit could be issued for the parking lot. The notice of violations was issued in April of 2008, and, as of the writing of this report, the site is still out of compliance.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, GO, B	Retail shopping strip, medical, office, fire station
SOUTH:	LC, GC	Building supply, free standing retail, fast food with drive-

		through window, medical, grocery, car sales lots, garage
EAST:	LC, GO, B	Apartments, medical, vet clinic
WEST:	TF-3	Single-family residence

**PUBLIC SERVICES:** The subject site currently has a permitted, shared access to Hillside Avenue, a 4-lane arterial street, with the abutting northern property. It also has an existing drive onto 1<sup>st</sup> Street, a two-lane, one-way east, urban collector. If approved, the Traffic Engineer requests the dedication of complete access control onto 1<sup>st</sup> Street. Current traffic volumes at this intersection are approximately 22,280 vehicles per day along Hillside Avenue, and 4,808 – 5,184 vehicles per day along 1<sup>st</sup> Street. The 2030 Transportation Plan estimates that traffic volumes at the intersection will increase to approximately 25,000 vehicles per day along Hillside Avenue, and approximately 5,000 – 7,000 vehicles per day along 1<sup>st</sup> Street. The 2030 Transportation Plan recommended that Hillside Avenue become a five-lane arterial street. Improvements along this section of Hillside Avenue were recently completed. Municipal water and sewer services are currently provided to the subject property. The Water and Sewer Department is requesting dedication of 5 feet of easement along the west side of the site, running parallel to the platted 10-foot wide alley, which has a clay pipe sewer line (installed 1911). A cured in-place liner was installed in 2004. Current minimum standard for a sewer easement is 20 feet wide.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies this site as appropriate for “Local Commercial” development. The “Local Commercial” category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Additionally, the Commercial Locational Guidelines of the Comprehensive Plan recommend that commercially-generated traffic should not feed directly onto local residential streets.

Commercial Locational Guideline #6 specifically recommends that auto sales lots and other types of infrequent purchase or non-neighborhood serving commercial uses be guided to areas containing similar uses, and away from neighborhood commercial uses. The closest car sales lot other than the applicant’s current sales lot is located at the northeast corner of Hillside and Douglas. Both the applicant’s current sales lot and the car sales at Hillside and Douglas are on sites that had been service stations in the past, or were properties that abutted these service stations. The current subject site was previously a flower shop, prior to that a restaurant and never abutting an auto related business. Both of these cited existing car sales sites not broken/disrupted by other developments or right-of-way and both are located south of 1<sup>st</sup> Street. The applicant’s request extends car sales beyond the Douglas - 1<sup>st</sup> Street block and locates it on a site that is separated from the applicant’s current car sales lot by 1<sup>st</sup> Street, a one-way urban collector.

In the past, the MAPC has identified smaller car sales lots as being more of a local retail establishment in their nature, as opposed to the cluster of larger car sales lots located primarily along Kellogg Avenue and Broadway Avenue, which are more regional in their nature. The MAPC has also recommended that buildings that had, in the past, been used for automobile activities, such as gas stations, be considered as possible sites for car sales. The subject site was developed with a small, free standing retail building used for a restaurant and flower shop prior to its demolition.

The site is located within the Wichita Central Northeast Area Plan (adopted by WCC September 2005), which identifies issues and goals within the area. Issues noted in the Northeast plan include the poor appearance of the area, the need for redevelopment, reinvestment, cleanup and code enforcement on vacant and deteriorating storefronts and housing. The City purchased the subject site for the Hillside improvements, scraped it clean and sold it for redevelopment. The minutes of the Council meeting, when the site was sold, noted that the applicant proposed to use the subject site for additional parking for his

current car repair and car sales business, which is permitted by right in the site's existing LC zoning. Redevelopment north of 1<sup>st</sup> Street, along Hillside, has been a combination of office, medical, retail, fast food and the larger mixed use College Hill Planned Unit Development. Wesley hospital is the engine for development in this area. In those developments that were built on scraped clean sites, development was per City Code and permits, included landscaping per the Landscape Ordinance, observed access control requirements, easements, etc., and were in character with the goal of providing neighborhood services and uses that encourage reinvestment along Hillside and the surrounding neighborhoods.

**RECOMMENDATION:** Extending the applicant's car sales lot north, across 1<sup>st</sup> Street does not match the redevelopment patterns of this portion of Hillside Avenue, north of 1<sup>st</sup> Street. Redevelopment north of 1<sup>st</sup> Street, along Hillside, has been a combination of office, medical, retail strips, fast food and a large mixed use Planned Unit Development. Typically, small car sales lots, such as the applicant's current car sales lot, are continuous and not broken by other developments or right-of-way. This proposal is unusual in that it is separated by the applicant's current car sales lot by 1<sup>st</sup>, a one way, urban collector. Typically, small car sales lots, such as the applicant's current car sales lot, had previously been used for other auto related uses, such as a garage; this site has not. Based on the information available prior to the public hearing, MAPD staff recommends the application be **DENIED**.

In general, this recommendation is based on the principles that the proposed use is not characteristic of the type of redevelopment occurring north of 1<sup>st</sup> Street along Hillside; that the site can be used for parking to support the applicant's existing business as currently zoned (or for vehicle repair), freeing up additional space on the applicant's current site for cars for sale; and the segment of Hillside from U.S. 54 to Central is a significant entry way to one of Wichita's major medical centers bordered by older traditional residential neighborhoods where outdoor uses are significantly limited. The City has backed redevelopment efforts in the Central and Hillside area with tax increment financing, and with CIP improvements to Hillside. The expansion of vehicle sales along this segment of Hillside is not a complementary use to those goals and efforts.

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

1. **The zoning, uses and character of the neighborhood:** The character of the neighborhood is predominately medical services, office, retail and some multi-family along the Hillside corridor, anchored by the Wesley Hospital complex on the north end. Outdoor display and storage uses are rare in this general area, and is in fact confined to the area south of 1<sup>st</sup> Street. Office type development will remain in the area as long as Wesley Hospital remains the economic engine for the area. The south end of the corridor (south of 1<sup>st</sup> Street) has the area's only two car sales lots, including the applicant's and his car repair shop, which are the only car repair shop in the immediate area. This segment of Hillside from U.S. 54 to Central is a significant entry way to one of Wichita's major medical centers bordered by older traditional residential neighborhoods where outdoor uses are significantly limited. Zoning in the area is a mix of GC, LC, GO, B and a PUD.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property is zoned LC which permits a wide range of retail, office and residential uses, by-right. The property is suitable for the uses to which it has been restricted. Included in those uses are additional parking for the applicant's current businesses of car repair and car sales, as long as the site comes into compliance. The additional parking on the subject site would allow more space to display cars for sale on the applicant's current car sales site.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Extending car sales north of 1<sup>st</sup> Street is out of character with the type of redevelopment that has occurred

north of 1<sup>st</sup> Street. The character of the neighborhood is predominately medical services, office, retail and some multi-family along the Hillside corridor, anchored by the Wesley Hospital complex on the north end. Introduction of a car sales lot into an area can lead to other outdoor sales, display or storage type of uses that can detrimentally affect nearby residential uses. Outdoor sales, display or storage type of uses along are currently confined to this area between Douglas and 1<sup>st</sup>. The applicant owns the TF-3 zoned single-family residential properties abutting or adjacent to the west sides of the current car sales/car repair site and the subject site. A zone change and Conditional Use request on these properties could allow another expansion of the applicant's car sales lots, encroaching into the abutting residential neighborhoods.

4. Conformance of the requested change to adopted or recognized Plans/Policies: Commercial Locational Guideline #6 recommends that auto sales lots and other types of infrequent purchase or non-neighborhood serving commercial uses should be guided to areas containing similar uses, and away from neighborhood commercial uses. Currently car sales lots along Hillside are located between Douglas Avenue and 1<sup>st</sup> Street; there are no car sales or auto repair located north of 1<sup>st</sup> Street. Both the applicant's current sales lot and the GC zoned car sales lot are on sites that had been service stations in the past. Both of these sites are neither disrupted nor broken by other developments or right-of-way. The applicant's request extends car sales beyond 1<sup>st</sup> Street and locates it on a site that is separated from the applicant's current car sales lot by 1<sup>st</sup> Street, a one-way urban collector. The site is located within the Wichita Central Northeast Area Plan (adopted by WCC September 2005), which identifies issues and goals within the area. Concerns noted by the Northeast plan include the poor appearance of the area, the need for redevelopment, reinvestment, cleanup and code enforcement on vacant and deteriorating storefronts and housing. Despite the MAPC's unofficial policy of supporting existing businesses, the request is not consistent with adopted plans and policies.
5. Impact on Community Facilities: All public facilities are available, but there is a need for an additional 5 feet of easement along the subject site's west side. Existing road facilities are adequate, but there is a need for dedication of complete access control along the site's 1<sup>st</sup> Street frontage and shared access along the site's north side on its Hillside frontage.

However if the MAPC supports this request, based on their past support of expansion of existing businesses, including car sales lots, staff recommends the following conditions:

1. Obtain all permits and inspection as required by OCI. All development will be per City Code including landscaping, access control, easements, ADA compliance and any other applicable standards.
2. In addition to uses permitted by right in the "LC" Limited Commercial district, the site shall be limited to the sale of cars and light trucks, as long as the sale of vehicles is associated with a "vehicle repair, limited" garage. No sale or rental of trailers, motorcycles or scooters, vehicles or trucks larger than pickups are permitted.
3. No automotive service or repair work shall be done on the site unless it is entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
4. Prior to the issuance of building permits, the applicant shall submit a revised site plan for review and approval by the Planning Director of Planning. The site plan shall be submitted within six months of approval by the MAPC or the City Council. The site will be developed according to the revised site plan. The site plan will be prepared and stamped by a licensed surveyor.

5. Within six months of final approval, the applicant shall install and maintain landscaping in accordance with an approved landscape plan.
6. A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
7. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons. No signage is permitted on the west side of any buildings, and there shall not be any signage along 1<sup>st</sup> Street frontage.
8. There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface.
9. No outdoor amplification system shall be permitted.
10. No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the car repair, limited, operation shall be within a 6-foot solid screened area.
11. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted. Outside pole lighting shall be no taller than 12 feet, including the base, and directed onto the site and away from the residential development abutting the west side of the site.
12. The applicant shall erect and maintain gated, solid six-foot screening along the site's western and northern property lines. The height of the fence will be less than 6 feet if needed to allow a clear line of sight along street frontage.
13. All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
14. The applicant shall dedicate, by separate instrument, access control closing all but one entrance onto Hillside Avenue. The entrance shall be reviewed and approved by the Traffic Engineer. The dedication must be provided to the City, prior to the Conditional Use being finalized. The applicant shall guarantee the closure of all but the approved entrances according to City standards.
15. Dedication by separate instrument of 5 feet of easement for the length of the west side of the subject site. This must be provided to the City, prior to the Conditional Use being finalized.
16. All improvements shall be completed within 6 months of the approval of the Conditional Use by the MAPC or the City Council. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.
17. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.

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.

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

**MCKAY** asked the square footage of the lot and what else can be located on this piece of property and still meet the parking requirements.

**LONGNECKER** said the lot is 5,000 square feet, 50-foot by 100-foot. He said it can be used for anything permitted by right under LC zoning within the confines of the size of the site. He said the area could be used as a parking lot. He said using the site for parking would free up more area for the display of cars for sale on the applicant's existing Conditional Use site for car sales located south, across of 1<sup>st</sup> Street.

**HENTZEN** asked what was on the lot previously.

**LONGNECKER** said that previously a flower shop and before that a restaurant had been located at the site, all these existed on the site had been before it had been bought by the City, who in turn sold it to the applicant. He referred to the warranty deed, which removed 30 feet from the original 130-foot (x) 50-foot lots for right-of-way along the site's Hillside frontage. This 30-foot for right-of-way gave the site its current 100-foot (x) 50-foot size and configuration.

**HILLMAN** said it looks like the lot was developed and fenced before proper approval was given.

**LONGNECKER** said there are development considerations on this property that still need to be resolved. He noted that the site plan said that all dimensions on the site plan needed to be confirmed by a survey. He said this was an important consideration because the site plan showed the site to be 4 feet deeper than what it was, based on the plat and the 30 feet of right-of-way being retained for the Hillside frontage. Those 4 feet shown on the site plan meant that the site was either in the Hillside or alley right-of-way. He referred to the case history, where OCI cited the applicant for paving without permit and being out of compliance in regards to landscaping, ADA compliance and other City Standards, including possible drainage issues. He noted that these considerations were the same wither the site was being used for parking or, if approved, a car sales lot. He noted that until these considerations were resolved the applicant could not use the site for parking or car sales. He also reported that DAB I denied the application by a vote of 6-3-1.

**BOB KAPLAN, AGENT FOR THE OWNER/APPLICANT** commented that from his own experience he knows that the Planning Commission is not overly concerned about what another board did or did not recommend and that they make their own decisions. He commented that at the time his client purchased the lot there was no prohibition against car sales or he would not have bought it. He referred to a handout which was a booklet with pictures of the lot and surrounding area. He commented that his client is not in violation of any ordinance because they have not used the property. He said his client has paved the property, screened it, and put up a barricade. He said his client can legally use the property to park cars on whether the MAPC grants or denies the conditional use request. He commented that there was commercial zoning within 600 feet of the existing property and that this site is not across the arterial. He said there has been much confusion about this site. He commented that Kurt Schroeder from OCI informed them that they must have a landscape plan and provide one handicapped parking stall. He added that his client would agree to the 18 conditions listed in the Staff Report, in addition to agreeing to convey an easement the City has requested for additional sewage. He said a 50' X 100' lot is a postage

stamp and said you can't put building on it and you can't do much with it in today's market. He said the 5,000 square feet will accommodate expansion of his client's car sales business. He commented that the business is a low key operation and that they don't operate weekends or nights. He said basically it is an automobile repair business with a few cars offered for sale. He said his client would like to place 11-12 automobiles on this small lot. He said his client has done a nice job of cleaning up this corner and referred to photos provided with the hand out. He also mentioned that the house to the west belongs to the applicant. He said it is a better deal for the City to have this lot under a Conditional Use permit and regulated. He concluded by stating that he didn't follow staff's rationale on used car lots. He said the applicant was present to answer any questions on the proposal.

**MITCHELL** asked how the applicant would comply with City landscape requirements, since the rail came out to the property line on both Hillside and First Street. He also asked Mr. Longnecker, what the landscape requirement was.

**KAPLAN** stated that his client has a registered architect and the site plan submitted with the application was part of a purchase negotiation with the City. He commented that a revised site plan will be provided in compliance with City requirements. He said they will probably have to relocate the rail/barrier.

**LONGNECKER** commented that the landscape requirement along a collector and an arterial is figured on a formula that is the average lot depth, which gives a square foot factor for the landscape street frontage. He also noted that landscaping would have to be provided on the west side where the site abuts residential zoning. He said the railing would probably have to be moved to accommodate the landscaping.

**MITCHELL** asked if the landscaping requirement can be waived.

**LONGNECKER** said it could be waived via the proper process, but noted OCI had cited the applicant for constructing a parking lot without a permit back in April. He said it was noted that the applicant needed to obtain an approved landscape plan and the site needs to be brought into compliance with ADA requirements and access control and other City Standards before a building permit could be issued for the parking lot. He again stated that the site could not be used for even parking until it was brought into compliance.

**MILLER** said the only way the landscaping can be waived is through the Board of Zoning Appeals process. He added that the Planning Director has the authority to approve an alternate plan that is less than what is required; however, the Planning Director cannot waive the requirement completely.

**ANN MCCARTOR, 3110 EAST FIRST STREET** commented that she owned the second residential house west of the lot. She mentioned page 3 of the Staff Report noting that Mr. Hancock was in violation of City code and non compliant. She mentioned the Water and Sewer Department's request for 5 feet of easement along the west side fence running parallel to the 10 foot wide alley. She said it's actually 15 feet on the other side of the fence, which is taking 15 feet off the back of the property which is completely covered with asphalt and circled with a fence. She said Mr. Hancock has already paved over some type of easement. She also mentioned discussion concerning establishing access from Hillside onto the property so the access on First Street can be removed. She said the property owner to the north of the property owns that property and access and she understands that he has not approved access to Mr. Hancock's property through his property. She said the only access can be from Hillside at this point. She added that she understood that property access had to be at least 200 feet from the intersection at Hillside. She also mentioned that Mr. Hancock erected a fence between his residential property and her property, without a survey and they believe the fence is on their property, in addition to attaching the fence to their garage without permission. She said she believes this is just more evidence of Mr. Hancock's disregard

for rules and regulations. She also mentioned that he dug a trench before he owned the residence to the west of the car lot property. She said not being in compliance and ignoring rules and regulations is not a good way to do business or be a good neighbor, in her opinion. She also mentioned possible expansion of his business down First Street. She concluded by saying that she is opposed to this proposal.

**KAPLAN** commented that they understand that they will have to landscape the property, so he believes that is a non-issue. He said they have also offered the easement requested by the City. He said they also have shared access along Hillside. He commented that his applicant has cleaned up the property, fenced it and put up the barricade, which may have to be relocated. He said his client hired Lafarge to pave the lot and that it was Lafarge who did not get the required permit.

**MITCHELL** asked if the client was occupying any or all of the 5 feet immediately east of the alley, which is the requested easement dedication.

**HOWARD HANCOCK, APPLICANT** said there was a misunderstanding on the alley and that there is a berm there. He said the fence is on the property line and that there was actually a steel peg located there, on the old platted property line. He said he has been in business at this location for 10 years. He said he maintains the property impeccably. He said he bought and fixed up the house and added that he did get permission from Norma to attach the fence to her garage. He said one of the reasons they sold the house to him was because the water line needed to be repaired and added that he got permission to fix that also. He referred to pictures of what the lot looked like before he purchased the property including abandoned cars which he got towed, refuse and debris.

**MOTION:** To give the applicant an additional one minutes to speak.

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

He said he wants the neighborhood to be improved. He said as soon as he acquired the lot he wanted to start improving it – pave it, clean it up. He said whatever he needs to do to comply with codes or zoning or permits he will be glad to do. He said he hired Lafarge to do what they needed to do, including pulling permits if required. He said he had no objections to doing whatever it takes to be legal.

**HILLMAN** asked the applicant if he had plans to utilize the property behind the existing automotive operations, the home across the street, or the two homes he could potentially own across the street.

**HANCOCK** said he didn't have plans for expansion at this time. He said the homes were purchased for investment and rental property. He said the house has been extensively improved and that there was no way he was going to tear the house down to expand the parking lot. He said years from now when he retires someone may want to buy the property and put up a medical building, that was possible. He said he did not see expanding his car lot back to the homes.

**MITCHELL** asked if the applicant was willing to agree to the 18 conditions listed in the Staff Report.

**HANCOCK** said yes.

**FOSTER** asked if there was an encroachment onto the alley by the fence.

**LONGNECKER** said at this point, staff can't tell because they don't have an accurate survey. He said the alley itself is only 10-foot wide and that it was platted back in 1887. He said any site plan provided by the applicant would have to be prepared and stamped by a licensed surveyor, which would confirm if the site was confined to the applicant's property.

**MITCHELL** commented that fences are permitted in easements.

**LONGNECKER** clarified that a platted alley is public right-of-way.

**MOTION:** To approve subject to staff's conditions attached to staff's second/alternate recommendation to approve (staff's first recommendation is to deny).

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

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The Metropolitan Area Planning Department informally adjourned at 3:10 p.m.

State of Kansas            )  
Sedgwick County         ) <sup>ss</sup>

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

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

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

(SEAL)