

**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**February 7, 2008**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, February 7, 2008, 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: M.S. Mitchell, Chair; Don Anderson, Vice Chair; David Dennis; Darrell Downing; David Foster; Michael Gisick; Bud Hentzen; Hoyt Hillman; Bill Johnson; John W. McKay Jr.; Don Sherman (in @1:33 P.M.) and Debra Miller Stevens. Ronald Marnell and G. Nelson Van Fleet were absent. Staff members present were: John Schlegel, Director; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Neil Strahl, Senior Planner, Derrick Slocum, Associate Planner and Maryann Crockett, Recording Secretary.

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1. Approval of the January 24, 2008 MAPC minutes.

**MOTION:** To approve the January 24, 2008, minutes as amended.

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (11-0).

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❖ **Items #2-1 thru 2-4 may be taken in one motion, unless there are questions or comments.**

2. Consideration of Subdivision Committee recommendations from the meeting of January 31, 2008.

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

2-1. **SUB 2003-37: Final Plat -- STOCKYARD INDUSTRIAL PARK ADDITION**

**NOTE:** This is an unplatted site located within the City. The site was approved in 1997 for a Conditional Use (CU-431) for an Auto Salvage Yard.

**STAFF COMMENTS:**

- A. Environmental Services has advised that this site is located in the North Industrial Corridor which may require access to the property for continued pollution site monitoring. The owner shall permit access to the property for any environmental study.
- B. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. Fees in lieu of assessment regarding sewer main connections are required.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. The drainage plan is approved.
- E. MAPC approved the existing westernmost access opening on Lot 2. A cross-lot access easement is

needed for the benefit of Lot 3. The existing opening located approximately 80 feet from the east property line is approved for right turns in/out only. The easternmost opening on the property shall be closed.

- F. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- G. The Applicant shall meet with Deputy County Surveyor to discuss depiction of plat boundary.
- H. MAPC has approved a 30-ft contingent dedication of right-of-way along the frontage of the property with the exception of the existing structure to the west.
- I. City Engineering requests a dedication of 35 feet of half-street right-of-way along 25<sup>th</sup> Street North which has been denoted on the final plat.
- J. The call at the southwest corner of plat needs to be changed from "SE Cor." to SW Cor."
- K. The sewer easement needs to be shown with sufficient location ties.
- L. The applicant shall guarantee the future paving of the south half of 25<sup>th</sup> Street North.
- M. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- N. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- O. 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.
- P. 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.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities which 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 applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. 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 NPDES 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. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.

X. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**FOSTER** asked how much right-of-way remained after the 30-foot contingent dedication.

**NEIL STRAHL** responded that Access Management Regulations require a 60-foot right-of-way and it meets the requirement.

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

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

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**2-2. SUB 2007-116: Final Plat -- LANGE ADDITION, located East side of West St., South of MacArthur Road**

NOTE: This is an unplatted site located within the City. The site has been approved for a zone change (ZON 2007-52) from SF-5, Single-Family Residential to LI, Limited Industrial. A Protective Overlay #198 was also approved for this site addressing signage, screening, outdoor storage, setbacks and permitted uses.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering has approved the applicant's drainage plan.
- D. Traffic/County Engineering has approved the access controls. The plat proposes one opening along West Street. The access opening for the lot needs to be at least 20-feet wide.
- E. GIS has requested 42<sup>nd</sup> Street be labeled as 42<sup>nd</sup> St S.

- F. County Surveying has requested a minimum building pad datum.
- G. County Surveying advises that the sanitary sewer on Film 1155, Page 941 needs dimensioned.
- H. A restrictive covenant shall be provided permitting cross-lot access for the benefit of the abutting property to the north, if and when said lot is developed for non-residential use.
- I. County Surveying requests that the sanitary sewer easement near the southwest corner be located.
- J. A dedication of street right-of-way for the south half of a turnaround for 42<sup>nd</sup> St. has been platted as requested. The applicant shall provide a guarantee for their share of paving of the turnaround.
- K. A 10-foot sidewalk and utility easement has been platted as requested. The associated platting's text language needs corrected.
- L. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineer's office.
- M. 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.
- N. The platting'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. Language regarding ownership and maintenance responsibilities shall also be included.
- O. 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.)
- P. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. 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.
- R. 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.
- S. 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 NPDES 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.

- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

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

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

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**2-3. SUB 2008-01: Final Portion of Overall Preliminary Plat -- BELLECHASE SECOND ADDITION**, located on the east side of 127<sup>th</sup> Street East and north of Harry.

**NOTE:** This final plat consists of the south portion of the overall preliminary plat approved for the site and represents the second phase of development. The street layout is consistent with the preliminary plat.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer (mains and laterals) and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering has approved the applicant's drainage plan. A guarantee for drainage improvements is needed.
- D. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- E. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant which provides for

ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

- H. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- I. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- J. County Surveying requests an onsite benchmark.
- K. 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.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. 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.
- O. 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.
- P. 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 NPDES 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.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Westar Energy has requested additional utility easements.
- S. 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 staff recommendation.

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

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2-4. **SUB 2008-02: One-Step Final Plat -- KANSAS TRUCK EQUIPMENT ADDITION**, located on the west side of Tyler Road and north of Harry.

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering has approved the applicant's drainage plan.
- D. County Surveying requests a benchmark datum.
- E. The plat proposes one opening along Tyler. Traffic Engineering requests the opening be defined.
- F. Traffic Engineering has approved the street right-of-way. A 10-foot sidewalk easement has been platted in addition to 50-foot half street right-of-way for Tyler.
- G. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- 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 plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- 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 U.S. 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 NPDES 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. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

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

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

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❖ **PUBLIC HEARINGS – VACATION ITEMS**

**3-1. VAC 2007-48: Request to vacate a portion of a platted easement**

**OWNER/APPLICANT:** Central Congregation of Jehovah's Witnesses c/o Curtis Bowen

**LEGAL DESCRIPTION:** Generally described as the east 40-feet of the north 416.64-feet of the platted 60-foot drainage & utility easement, running parallel to the west lot line of Lot 1, Block 1, the Northeast Elementary School Addition, Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located west of Woodlawn Avenue, on the south side of 29<sup>th</sup> Street North (WCC #I)

**REASON FOR REQUEST:** Additional space for development as a future church site

**CURRENT ZONING:** Subject property and all adjacent and abutting properties are zoned "SF-5" Single-family Residential

The applicant is requesting consideration for the vacation of the described platted easement. The site is undeveloped and was owned by USD 259, subsequently the installation of water and sewer lines reflect what was planned to be a school site. The subject site has access to sewer along its 29<sup>th</sup> Street frontage and from the south. At this time the subject site has no direct access to water, which would have to be extended from property that the applicant does not own or bored under 29<sup>th</sup> Street North. There is 50-foot of half street right-of-way (ROW) along the site's 29<sup>th</sup> frontage; 29<sup>th</sup> Street North requires 60-feet of half-

street ROW. Per the GIS map there are no manholes, sewer or water lines in the easement. The Northeast Elementary School Addition was recorded with the Register of Deeds July 9, 2002.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, Traffic, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted drainage and utility easement as described in the legal description with the following conditions.

- 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 January 17, 2007 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 drainage and utility easement 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. Therefore, the vacation of the portion of the platted easement described in the petition should be approved with conditions:
  - (1) Retain the west 20-feet of the described portion of the 60-foot platted drainage and utility easement as a utility easement.
  - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide City Public Works, Water & Sewer, Storm Water and franchised utilities with any needed plans for review for relocation of utilities. Provide any guarantees needed for the relocation of utilities. Provide any easements needed for the relocation of utilities. All must be completed prior to proceeding to [the Wichita City Council](#) for final action.
  - (3) Dedicate 10-feet of right-of-way along 29<sup>th</sup> Street North. Provide to Planning for recording with the Vacation Order at the Register of Deeds.
  - (4) The applicant will have to complete a lot split, which will reflect their ownership of that portion of Lot 1, Block 1, Northeast Elementary School Addition, which they intend to build on, as separate from the USD 259 owned portion of the same lot.
  - (5) All improvements shall be according to City Standards and at the applicant's expense.
  - (6) [Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.](#)

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Retain the west 20-feet of the described portion of the 60-foot platted drainage and utility easement as a utility easement as a utility easement.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide City Public Works, Water & Sewer, Storm Water and franchised utilities with any needed plans for review for relocation of utilities. Provide any guarantees needed for the relocation of utilities. Provide any easements needed for the relocation of utilities. All must be completed prior to proceeding to [the Wichita City Council](#) for final action.
- (3) Dedicate 10-feet of right-of-way along 29<sup>th</sup> Street North. Provide to Planning for recording with the Vacation Order at the Register of Deeds.
- (4) The applicant will have to complete a lot split, which will reflect their ownership of that portion of Lot 1, Block 1, Northeast Elementary School Addition, which they intend to build on, as separate from the USD 259 owned portion of the same lot.
- (5) All improvements shall be according to City Standards and at the applicant's expense.
- (6) [Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.](#)

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

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

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**3-2. VAC 2008-01: Request to vacate a portion of a platted setback**

**APPLICANT/OWNER:** Eddie C & Vickie L Hamilton

**LEGAL DESCRIPTION:** Generally described as the north 6-feet of the platted 30-foot front setback that runs parallel to W Lakeview Drive South, on Lot 1, Block 7, Miles Country Club Estates Addition, Sedgwick County, Kansas.

**LOCATION:** Generally located west of 231st Street West, north of 55th Street South, on the north side of West South Lakeview Drive, between the two West Lakewood Drives (BoCC #3)

**REASON FOR REQUEST:** Remove existing encroachment (residence) and to allow the addition of an attached garage.

**CURRENT ZONING:** Site and all abutting and adjacent properties are zoned "RR" Rural Residential.

The applicant proposes to vacate approximately 6-feet of the platted 30-foot front setback. The zoning of the subject site is "RR." The UZC requires a minimum of a 30-foot front yard setback for the "RR" zoning district. If the setback was not platted, the applicant could apply for an Administrative

Adjustment, which would reduce a 30-foot setback by 20%, resulting in a 24-foot setback, which is 0.3-feet more than the applicant is requesting. The UZC's minimum lot size for the "RR zoning district is two-acres for a lot with a septic system and 4.5-acres for a lot with a sewage lagoon. The irregular shaped 0.56-acre lot and most, if not all of the other residential lots in the Miles Country Club Estates Addition do not meet that minimum lot size for "RR" zoning. The site and the subdivision are located in an unincorporated part of the County and are well outside of any small cities' growth areas. There are no platted easements, water lines, manholes or sewer lines located in the described portion of the platted setback. There are no utilities within the described portion of the platted front setback. The Miles Country Club Estates Addition was recorded with the Register of Deeds May 12, 1965.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from County Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval of the vacation of the described portion of the platted setback with conditions.

- 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 January 17, 2007 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. Therefore, the vacation of the portion of the platted setback described in the petition should be approved with conditions:
- (1) The platted 30-foot front setback, located on Lot 1, Block 7, Miles Country Club Estates Addition, located along its W Lakeview Drive South frontage will be replaced with a 24-foot setback.
  - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
  - (3) All improvements shall be according to County standards and at the applicant's expense.
  - (4) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) The platted 30-foot front setback, located on Lot 1, Block 7, Miles Country Club Estates Addition, located along its W Lakeview Drive South frontage will be replaced with a 24-foot setback.

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

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

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

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❖ **OTHER MATTERS**

**4. City of West Valley Incorporation**

**CITY OF WEST VALLEY INCORPORATION.**

**DIRECTOR SCHLEGEL** reported that he had received a notice from Don Brace, County Clerk, for a public hearing to be held by the Board of County Commissioners (BOCC) at the March 5, 2008, meeting concerning the incorporation of a new city, the City of West Valley. He said the notice invited the MAPC to provide comments or testimony concerning the incorporation. He referred Commissioners to information sent with the Planning Agenda including the Petition, GIS Map, affidavits, service delivery plan, and a letter from attorney Bob Kaplan regarding the proposal. In addition, he provided a handout which was a list of eight factors to be considered by the BOCC on incorporation of a new city. The handout also listed six factors to be considered if the territory or any part thereof was within five miles of an existing city. He explained that MAPC participation in this process was not required; this was simply an invitation.

**BOB PARNACOTT, ASSISTANT COUNTY COUNSELOR,** commented that he was present to answer any questions.

**CHAIRMAN MITCHELL** asked if anyone was present to answer questions about the service plan or speak on behalf of the petitioners

**DIRECTOR SCHLEGEL** said no, that staff had not invited the petitioners but they could do that for the next MAPC meeting.

**MCKAY** said he would like clarification of conflict of interest at the County level since one of the County Commissioners was a big pusher of this proposal. He asked if that person was required to acknowledge a conflict of interest and step down from voting on the issue.

**PARNACOTT** commented that they have examined that issue and although one of the County Commissioners owns property in the area of the proposed incorporation; incorporation of a City is a legislative matter, not the same as a quasi judicial matter like a zoning case, so the conflict issues were a little different. He said if the Commissioner had a direct monetary or fiscal interest that he would benefit from specifically, then there might be an issue. However, in this situation the Commissioner is a member of a group of people petitioning to be incorporated. He added that because the incorporation area is

within five miles, it requires a unanimous vote of all County Commissioners. He said the County's legal opinion was that there was no legal bar to this Commissioner's participation. He referenced a case in Topeka concerning formation of a special benefit district where several City Council members owned property in that district area.

**MCKAY** asked if the County Commissioner's appointee to the MAPC should declare a conflict of interest?

**PARNACOTT** said in his opinion, no.

**DOWNING** commented if the GIS map was accurate, then there were at least five separate, unconnected land bodies that were going to make up the new city of West Valley.

**DIRECTOR SCHLEGEL** said to the best of staff's knowledge, the GIS map was accurate and developed from legal descriptions of the properties that are being petitioned for incorporation. He commented that there was no requirement in State Statutes that the properties be contiguous.

**HENTZEN** asked if the floodway could be used to connect all the properties.

**DIRECTOR SCHLEGEL** said apparently the floodway has not been included in the petition. He commented that he had not checked every legal description, and just assumed that the people who created the map did an accurate job.

**PARNACOTT** explained that the legal descriptions exclude both roadways and the floodway. He also reiterated that State Statutes do not require that the properties be contiguous.

**JOHNSON** asked why the streets were omitted from the proposed incorporation area.

**PARNACOTT** said that was the option of the petitioner submitting the incorporation. He said with annexations in the County, a city will often annex up to a roadway and not include the road.

**JOHNSON** asked who will patrol the roadways that are left out of the proposed incorporation area.

**PARNACOTT** said the roadways in the unincorporated areas will be maintained by the county or township. Under the Statutes, if the petition is approved for incorporation as a third class city, the townships cannot charge a road maintenance levy on properties within the incorporated limits, so the township will lose any mill levy for road maintenance. He said this will be part of the discussion at the BOCC meeting.

**DIRECTOR SCHLEGEL** referred MAPC members to the page entitled "Incorporation of West Valley Kansas" in the agenda materials, specifically the portion regarding entering into an agreement with Valley Center Township for road maintenance. He added that law enforcement, emergency medical services and fire will continue to be provided by the County.

**JOHNSON** commented that the point he wanted to make was there was a piece of property on south West Street that was annexed into the City of Wichita and that two or three times there were emergencies at the location and no one knew who should respond. He said imagine what this is likely to lead to. He also mentioned that he owned a facility in an industrial park in the County. He said no utilities were provided by the City of Wichita; however, when the City decided to annex the area even though everyone in development preferred not to be annexed, it didn't make any difference because the City annexed the area anyway. He said it didn't make any difference what he wanted as a property owner. He said it seems that someone who decides to start their own City has more rights than he did as to whether he wanted to stay in the County.

**PARNACOTT** said the petition meets the minimum statutory requirements for incorporation of a city. He mentioned no acreage requirement but that the area must include at least 300 residents.

**DOWNING** asked about the County policy concerning annexing roads where a City is located on both sides.

**PARNACOTT** said under State Statute, when a city annexes up to a road but does not take the roadway, the County can notify that City that they want them to annex the roadway, and then the city is required to do so. He said rather than demand that city's annex roadways, the BoCC works with them and negotiates. He mentioned several scenarios such as cities on both sides of the roadway, a city on one side of the roadway, or two different cities on each side of the roadway.

**MCKAY** referred to several pieces of property on the map and asked if they wanted to be included in the West Valley incorporation? He wondered if those areas were asked to sign the petition and chose not to participate, or were they even asked?

**DIRECTOR SCHLEGEL** said someone involved with the petition needed to answer those questions.

**DENNIS** said his biggest concern was that there was over \$2,000,000 worth of property in this area. He asked who is getting tax monies and who is paying for different services. He said he would like to know who is going to pick up the expenses for each of the different areas in the proposed incorporation. He said it looks like the responsibility for services will stay with the County, but the incorporation will take tax monies away from the County. He said he didn't think it was right that the County should pick up costs for someone to put together a city if the city has no intention of providing any services.

**PARNACOTT** explained that the County mill levy will stay the same, so the County will still receive funds for Sheriff and Fire Services. He said if the incorporation is approved, the road mill levy charged will be discontinued. He said discussion needs to be had with the Township on how to share the expense of road maintenance.

**DENNIS** clarified so the roads were the only item impacted?

**PARNACOTT** acknowledged that was a fairly true statement.

**FOSTER** commented that he needed to disclose that Rice, Foster Associates assisted the Valley Center Planning Commission and the Deputy Zoning Administrator develop their Comprehensive Development Plan. He said that he verified with staff that it was acceptable for him to participate in this discussion. He said annexation of this area in the future would be compatible with the Valley Center Comprehensive Development Plan. He said it would not be compatible to form this area as a separate City. He said there are a host of other issues related to infrastructure and other items. He said another broad concept for discussion is that it is dangerous for something of this nature to establish a precedent for development of a City simply to thwart the growth of an adjacent city. He said he felt that was an important question before the MAPC.

**MCKAY** mentioned that the City Manager from Valley Center was present at the meeting and asked him if he had any comments on the issue? (Noted for the record, he declined to speak.)

**GISICK** asked if this was the best and only way for the petitioning property owners to protect themselves from annexation.

**PARNACOTT** commented that legislation was just introduced to change the annexation laws to require an election on unilateral annexations (without the consent of the landowners). He said if the vote failed, then a city would not be allowed to attempt annexation of the area for another four years. He said under

the current law this would be the only way to protect against unilateral annexation, and added that this is referred to as “defensive incorporations.”

**HENTZEN** clarified that the legislation has been introduced but it is not law.

**PARNACOTT** clarified that it has been introduced but hearings have not been conducted yet.

**HENTZEN** commented then it may not become law.

Responding to a question from **MCKAY** as to who introduced this legislation, **PARNACOTT** stated that it was a series of lawmakers from around the state and mentioned annexation cases in Johnson and Shawnee Counties. He said quite a bit of opposition to the proposed legislation was expected.

**CHAIRMAN MITCHELL** commented that with proposed annexations, the MAPC is asked to evaluate them in terms of their compatibility with the Comprehensive Plan. He said it appears the Commission’s role here is different and asked exactly what they were being asked to do?

**DIRECTOR SCHLEGEL** commented that the Commission’s role was different and added that incorporation of a new city is not something that is addressed by the Comprehensive Plan. He added that State law does not require any kind of finding from the Commission on incorporations. He said the Commission has been invited to provide testimony of whatever nature the Commission deems appropriate to the BOCC’s at its public hearing on March 5, 2008. He said this is an opportunity to comment, if the Commission chooses to do so.

**PARNACOTT** briefly reviewed the State law on incorporation which requires the County Clerk to notify a number of people once the petition has been received and a public hearing date set including the following: planning commissions exercising authority over the area proposed for incorporation which includes the Valley Center Planning Commission, all cities within 5 miles which includes Bentley, Kechi, Maize, Park City, Sedgwick, Valley Center and Wichita. He said those cities will be given an opportunity to present testimony at the hearing. He said they also have to provide notice to the State Director of the Department of Community Development in the State Commerce Department. He said because this Commission is entitled to notice under the Statute, it is also entitled to present testimony either in writing or by appearing at the hearing.

**HENTZEN** asked if any of the other eighteen cities in County have offered comment, or have they been asked?

**PARNACOTT** said they are only required to notify the cities within five miles of the proposed incorporation area.

**HENTZEN** asked if they have received any response from any of the cities notified.

**PARNACOTT** said notices are required to be sent fifteen days prior to the hearing; that they were just sent out; and the County has not received any responses yet.

**FOSTER** said perhaps it was premature, but asked if it was appropriate for the MAPC to take a motion either in support or not in support of incorporation.

**DIRECTOR SCHLEGEL** said it was possible, and added that it was up to the MAPC to decide what it wants to do.

**DENNIS** said he would like more information from the people putting the petition together and the people most affected in Valley Center before the Commission entertained a motion on the issue. He said he did not think he could make an informed decision without more information.

**CHAIRMAN MITCHELL** asked if it would be appropriate to ask for a hearing at the next Planning Commission meeting on this matter and ask the petitioners or their representatives to appear.

**PARNACOTT** said the Commission could request that they appear; however, he said they are not required to appear. He said the public hearing for this incorporation will be held by the BOCC. He said County staff has some information that they were going to present at a staff meeting on February 19, 2008. He said they may be able to share this internal information with the Planning Commission at its February 21, 2008, meeting.

**MOTION:** To review the application at the March meeting.

**HILLMAN** moved, **HENTZEN** seconded the motion, and it carried (10-2).  
**JOHNSON** and **MCKAY** – no.

**DIRECTOR SCHLEGEL** clarified that staff should invite representatives of the petitioners, interested parties, the Cities within five miles of the area including Valley Center and any other City that received an invitation to testify at the public hearing.

**HILLMAN** added that the Commission would also like information from County staff.

**GISICK** asked if the MAPC was accomplishing anything by doing this and did the MAPC’s opinion mean anything legally, since the County Commission will be hearing the exact same testimony themselves.

**PARNACOTT** said after the MAPC hears the information it will be up to them to decide what want to do with it. He said a motion or resolution could be formed to share with the BOCC. He concluded by stating that the MAPC’s recommendation would not be a binding recommendation, but he thought the BOCC would like to hear the information and consider it with other information and testimony received on the proposal.

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The Metropolitan Area Planning Department informally adjourned at 2:10 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 \_\_\_\_\_, 2008.

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

(SEAL)