

## METROPOLITAN AREA PLANNING COMMISSION

### MINUTES

April 5, 2001

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 5, 2001, at 1:00 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: Jerry Michaelis, Acting Chair; James Barfield (late arrival); Dorman Blake; Kerry Coulter; Frank Garofalo; Bud Hentzen; Bill Johnson; Richard Lopez (late arrival); John McKay, Jr.; Ron Marnell; Susan Osborne-Howes (late arrival); George Platt; Harold Warner and Ray Warren. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Bill Longnecker, Senior Planner, Neil Strahl, Senior Planner; and Karen Wolf, Recording Secretary.

1. **Case No. DR2001-02** – Adoption of the amendments to the Wichita-Sedgwick County Unified Zoning Code.

**DONNA GOLTRY**, Planning staff, "This is a segment of the adoption of amendments to the Unified Zoning Code. Today's discussion is to be focused on the topic of adult entertainment and sexually oriented businesses. I had sent a packet to you on Friday where I had excerpted those portions of the proposed amendments that related only to sexually oriented businesses and adult entertainment. I did have three little errors in it, so I have a supplemental memo that is at each of your desks. If you will turn to that supplemental memo, I will go through what the change is on each page.

On the first page, on no non-conformities created by adoption of this Code, I had improperly listed on the very bottom where it is underlined. The version you got two weeks ago said Section VII-I. That was correct because it cross-referenced registration of non-conformities. It was pointed out to me at our public hearing that we had two weeks ago that it should have had a cross-reference to Section VII-J, which is the amortization of non-conformities. I did not get the message properly and did not realize that I should have incorporated both. It should read both Section 7-I and 7-J. That is the change on Section 1. Did you all find what I am talking about, or am I moving too quickly?

On the second page, the only changes in the 'cut and paste' job I did to give you only the adult entertainment-sexually oriented business information, word decided that night club in the City must be labeled as far as 'a', but it should have been labeled 'b' because I didn't include everything like the first definition. So that is the software program. It is correct as shown on the supplement 'b' nightclub in the City.

Turning to Page 3, I was only excerpting those sections that related to the 'SOBs'. I should have included specifically listing out that sexually oriented business is subject to Section III-D.6. (ff). Those are the supplemental regs on that. That should appear in Section III.14, which is on Limited Commercial District. Section III-B.16, which is the General Commercial district, Section 3-B.19, which is the Limited Industrial district, and Section 3.B.20, which is the General Industrial district. It did not appear in the CBD district, since we do not have any County establishments within the CBD.

I know that I have already presented twice on this subject, and so I don't think I need to say any additional words. I do have Karen Duranleau with the County Counselor's office here today and I believe she has a few words she would like to say to you regarding the County's requested language."

Osborne-Howes arrived at 1:15 p.m.

**DURANLEAU** "Good afternoon. I am the Assistant County Counselor. You have before you these proposed amendments, which would make the Unified Zoning Code a provision for the sexually oriented businesses. The authority under Kansas law is KSA 12-770B, which allows Sedgwick County the specific authority to regulate sexually oriented businesses constituting non-conforming uses.

Last year, the County was approached by at least hundreds, maybe thousands of citizens who complained about the secondary effects of these of these businesses that they were having on their communities. The County responded by enacting the most recent adult entertainment code. That was enacted in June of 2000, and slightly amended in November. This was enacted pursuant to the County's ability to regulate the health, safety and welfare of the citizens. The basic overall jest of the County's adult Entertainment Code is to separate alcohol from nudity and give the adult businesses four years to relocate not closer than 1,000 feet from a public park, church, school, another adult establishment or an alcohol establishment. It gives them four years. That is one of the basics of the County's Code.

The County could have banned public nudity completely but chose to not do so. The County's Code does not prevent nude dancing; it is the separation of the nudity and the alcohol. There are other regulatory items within the Code. It is a 50-page Code; it is lengthy, but that is just a summary of what the County's Code does. Currently, as you know, the Unified Zoning Code does not regulate these types of businesses, and we are asking this Committee to adopt these proposed amendments so that we can have the County Code and the Unified Zoning Code go hand in hand and be in conformity with each other. Does anybody have any questions?"

**HENTZEN** "I would like to ask you, in the last paragraph of your presentation, do I understand that correctly? It says 'on or before June 30 of 2004'...."

**DURANLEAU** "Are you referring to the blue sheet?"

**KROUT** "On Donna's attachment, the very last page, the last paragraph."

**DURANLEAU** "Okay. 'On or before June 30, 2004, yes."

**HENTZEN** "That means that they have until that date in which to find a place to move."

**HENTZEN** "Not to get out of business."

**DURANLEAU** "No, not get out of business, but to find a place to move, which is not within 1,000 feet of a school, park, church, residential area, an alcohol establish or another adult business. They have until then to move. If they are currently within 1,000 feet of one of those items, they have until June 30, 2004 to move."

**HENTZEN** "That is what I thought it said."

**MICHAELIS** "This is a hypothetical question, but what would happen, if, for instance, one of these places were located outside of that 1,000 foot area and then within this time frame some church or something like that moves in next to them."

**DURANLEAU** "We did provide for that as an exception that wouldn't be a burden on the adult business. If a place moves in, that would be an exception and that is under Amortization 'J' Section I-B, I believe it is."

**MICHAELIS** "Okay."

**DURANLEAU** "I am sorry, it isn't that one, it is Section 1-C."

Barfield arrived at the meeting at 1:31 p.m.

**MICHAELIS** "That is still saying that it has until 2004 though."

**DURANLEAU** "Oh, it is 1-A. I'm sorry."

**GOLTRY** "I know it is there somewhere."

**DURANLEAU** "It is in 1-A. It says 'Section 1 above shall not apply to a sexually oriented business if said sexually oriented business first locates at a particular premises after June 28, 2000. That is the date of the enactment of the Code. And the church, school, public park, residential dwelling, another adult establishment or an alcohol establishment moves into the 1,000 foot area after the sexually oriented business has commenced operations on the premises. So it is 1-A."

**MICHAELIS** "So do I understand that to mean, then, that if this was there before June 28, 2000 that they will fall under this exemption, or where will they be then?"

**DURANLEAU** "If they were there before that business.."

**MICHAELIS** "If they were in business before June 28, 2000, if then somebody moves in next to them, are they going to be required to move, or can they stay?"

**DURANLEAU** "That one is addressed in Exception 'C', 'a sexually oriented business may remain at a location within 1,000 feet of a church, etc., until June 30 of 2004 if that business was operating as one of those sexually oriented businesses before March 1 so long as it is in compliance with the provisions of the Code. Humm....Did we get this one in there, Donna?"

**MICHAELIS** "I wonder, too. I am totally confused now. Because it seems to me like the only time they can stay is if they were there after June 28, 2000, the way this is written, or the way I understand it."

**DURANLEAU** "I am sure that was there. (To man in the audience) Do you see that one, Allen?"

**MICHAELIS** "It almost seems easier if we wouldn't put a June 28, 2000 in and just say anything that is already existing."

**DURANLEAU** "If it is consistent with the Adult Entertainment Code, then I believe we do have a provision in the Adult Entertainment Code that says that if a school, church, park, etc., moves into that area, that that doesn't prevent that club from continuing to operate."

**MICHAELIS** "Right, but then we come back to paragraph C, and it says that they only have until June 20, 2004,...."

**DURANLEAU** "Yes, it does."

**MICHAELIS** "Where the first exception says that if they were there after June 28 of 2000, they could stay indefinitely."

**GOLTRY** "That is right."

**MICHAELIS** "Well, my question is what happens before June 28, 2000?"

**GOLTRY** "If it was a legal establishment and it is in compliance between 1997 and June 28, 2000, that is where you have the amortization."

**DURANLEAU** "Right. They would fall within that amortization section. They would need to be out by then."

**GOLTRY** "That is the way it was explained to me."

**MICHAELIS** "So any pre-existing business that was located prior to June 28, 2000 and a church or a park moves in next to them, then they are going to be required to be relocated by the 2004 date?"

**DURANLEAU** "I agree that that is the way it reads here. Our Code does have provisions that don't require a club to move because someone moved in next to them."

**MICHAELIS** "I think that one needs some rework. I don't think it is at all fair to ask somebody that was there in 1998 to relocate when somebody comes in and puts up a brand-new building June 29, 2000 and they don't have to relocate."

**DURANLEAU** "I agree and I apologize. I thought I caught everything on the revisions, but apparently that one slipped through."

**KROUT** "I think that to the point that if it came in after June 28 of 2000, the only way it could have come in is if it meant the 1,000 foot requirements."

**DURANLEAU** "Right."

**KROUT** "And if it met the requirements of the Adult Entertainment Code."

**DURANLEAU** "Right. So in other words, we are making a current requirement that they cannot locate there. We are accepting only the ones that are currently within 1,000 feet of those until 2004."

**KROUT** "But this does apply if there is one out there today that was established before June 28 of 2000, if it met and it still meets all of the requirements of the 1,000 foot requirements today and then tomorrow a residence comes in within 1,000 feet that it is subject to amortization. I am not sure, why should it matter whether it was established before or after June 28?"

**DURANLEAU** "That is when the new Code came into effect, or was adopted. I do agree that that is not entirely what we meant and we may need to re-word that if it is not acceptable to the Commission. I agree that it is not clear."

**KROUT** "I know that the County Commission is anxious to get this on their agenda. Is it possible that maybe the County Counselor's office can do some more research and work and come back later on our agenda this afternoon?"

**DURANLEAU** "We will be happy to do that."

**JOHNSON** "I want to take a little different approach and ask staff, once this is in place and we have a piece of property that has a business in it if there is an application for something within that 1,000 feet, will staff's position have to be that they will not support it because it is within 1,000 feet of one of these adult entertainment centers?"

**KROUT** "No. But the implication of you approving something that is within 1,000 feet, if that use was established before June 28, the impact would be that that use has to go. But I don't think that would be a reason for us to necessarily recommend denial of a use."

**JOHNSON** "As well as if the owner of one of the businesses comes in protesting the approval of one."

**KROUT** "Yes, he might."

**WARREN** "If this is passed, obviously, it passed anything that deals with I suppose, in this case, that deals with the 1<sup>st</sup> and 5<sup>th</sup> amendment, it is going to probably be subject to a test of constitutionality. Was this drafted from some ordinance that has already been tested?"

**DURANLEAU** "Certain sections of the County's Adult Entertainment Code was borrowed from a code that was enacted by another city. To my understanding, that was still not an established code, but the County consulted with several constitutional lawyers and one of the drafters of the Code is here today.

Every attempt was made to not restrict their first amendment rights. And yes, we do expect our Code to be challenged. It is just the nature of the beast. It is one of those things that will probably be challenged, but we have done everything that we could think of to place safeguards in effect for the 1<sup>st</sup> Amendment rights."

**WARREN** "If you chose then, for whatever reason, instead of making this a 1<sup>st</sup> amendment item, was to make it a property rights item, I think."

**DURANLEAU** "Like I mentioned, the County has the power to make regulations for the health, safety and welfare of their citizens, which is traditionally called 'police power'. The County has that power in addition to the statutory power that I mentioned, KSA 12-77. B. It does specifically authorize the County to enact sexually oriented businesses that are not conforming. We can eliminate those. It does allow that. So we have several different authorities to enact under, and this is another one of our authorities that we are attempting to regulate."

**WARREN** "I have no good feeling about sleaze or this kind of business at all and I would do everything I could to oppose it. I do question, though, whether it is really a land use issue. But that is something that could be resolved later. I really think it is a 1<sup>st</sup> amendment issue."

**GAROFALO** "I, too, am real confused on all of this date business. Is the intent here that as of June 30, 2004, none of these places can be within 1,000 feet?"

**DURANLEAU** "Yes, that is the intent of it."

**GAROFALO** "I would think that you could say it a lot planer than some of the ways you have got it here."

**DURANLEAU** "Well, we had to make the general rule that they could not be there at that location and then make exceptions—you know, they are accepted until June 30, 2004. They can remain there, that they don't have to move right now."

**GAROFALAO** "But everybody has to move if they are there no matter when they went in, in 2004, they have to be out."

**DURANLEAU** "That is what we are going to work on this afternoon, to make sure that it is in conformity with the Adult Entertainment Code. It is my understanding that there is an exception in the Adult Entertainment Code to schools that move in next to, let's say, an adult business. They haven't, in essence, waived that in moving in next to that place."

**GAROFALO** "So they can remain?"

**DURANLEAU** "That is my understanding with the Adult Entertainment Code, and I will research that and come back. If it would make the Commission feel better about it, I would certainly want this to in conformity with the Adult Entertainment Code."

**MCKAY** "I have two or three things. No. 1, I am confused about the four years. You say four years and then you say before June of 2004."

**DURANLEA** "Four years from the date that the Adult Entertainment Code was enacted."

**MCKAY** "So it really isn't four years from the time this portion is approved, it is from when the other one was. So this is like an amendment to it?"

**DURANLEAU** "Well, this isn't really an amendment to the Adult Entertainment Code, it is another enactment of the County's power. It is not really an amendment to it, but I am speaking of the four years. That is when the Adult Entertainment Code was enacted."

**MCKAY** "This portion of it was not adopted, so by using four years, if I am reading this, I am thinking of four years from the date of adoption, and not something that happened a year and a half ago."

I think we have beat the grandfather portion of it to death, and you are going to re-write that. But I agree with Ray. I think we are using zoning to regulate morality and I agree that I don't think it is something that has to do with zoning."

**DURANLEAU** "Well, like I said, we have done very thorough research, and this is not a moral issue, it is an issue that has been raised by many citizens that they don't like the way that these businesses are having effects on their communities. They are diseases and the secondary effects can go on and on about what types of diseases these places harbor and encourage. The effects on children going to school, people trying to worship; you can say that they are morality, but there are so many other things that they effect."

As I said, the County could have had a complete ban on public nudity. The City of Wichita did that, and the County chose not to. It is just a matter of separating the alcohol and the nudity. We tried to tailor it so that it is not completely prohibited. The Statute gives us the authority to do this and it is just another avenue that we would like to have available."

**MARNELL** "Could I suggest that we leave this subject now if we are not going to vote on it? Then when they have made the modifications, we can take it back up."

**MICHAELIS** "Well, let's say if you have a question about the date issue, then no, but if we have some other questions, we might just as well do them now."

**PLATT** "Yes, in case they have to change something else."

**MARNELL** "I have a question that has to do with the amortization is purely fixed on a date in the past, so if we go five years forward and a business locates, builds a building somewhere and is operating lawfully and next to them happens to be, we will say some farm land or if a person builds a residence within 1,000 feet of it, are they immediately out of business?"

**DURANLEAU** "That is one of the provisions that I need to check on to make sure that our proposed Code amendments match to the Adult Code."

**MARNELL** "Yes, because I understood that you said that the amortization is based on the specific date, not a period of time."

**DURANLEAU** "Right. It is based on the June 30 date. We used the same dates and we did intend on getting this finalized with the Commission before now, so it may be the time lag—we are coming up on a year—so that is why we used that date is what I am saying, we used the date of June 30 of 2004 and that is why I keep saying four years because it is four years from the date that it was enacted by the Board of County Commissioners. There is, I believe case law and cases that have been tested successfully on a two-year amortization, and so we didn't want to come that close, so we chose the four years to amortize."

**MARNELL** "What I am asking though, is that once you get past that specific date, and someone is operating a lawful business and a residence goes in within 1,000 feet, it makes them in violation immediately."

**DURANLEAU** "That is what I am going to work on. We are working on an exception on that. I agree that that would not be fair to make them move. I just have to make it in conformity with our Adult Code, and I am sorry that I didn't catch that earlier."

**HENTZEN** "I want to ask about that amortization, too. On a broader sense, we have probably at least hundreds or maybe even thousands of non-conforming legal businesses in this county. Do you feel that we, as the City and the County together can amortize any non-conforming business in the non-conforming legal business? I am thinking of a junkyard or something else that we are tired of but they have been there for 40 years. Can we do that to them like we are doing it to these people?"

**DURANLEAU** "I am not an expert on all Zoning Code issues, but it seems to me—and there would be case law, I am sure, in each individual circumstance—but I would think so. Amortization is so that we don't immediately deprive them of a property right, and by giving them that time to locate, then we are balancing out our takings, the Government takings and giving them that time period. I can't claim to be an expert on all case law or every situation that exists, but just my gut feeling is that that would be okay."

**OSBORNE-HOWES** "I have two questions. I came in late, so maybe somebody has already addressed this. The first one is that let's say that I have an adult-oriented bookstore out in the County and I had had it for 10 years. In the year 2003, someone locates a residence next to me. Would I then have to go out of business?"

**MICHAELIS** "That has been the big debate. That is what she is going to try to work out."

**OSBORNE-HOWES** "Okay. Good. Secondly, is Sedgwick County basically saying to us that they want this law to be in existence and we are just trying to create conformity with the zoning? Because I have the same question, I think that some of the other people have had."

**DURANLEAU** "We feel that it would be just simply more of a conformity with each other so that one hand doesn't conflict the other hand and both bodies of law go together and are not in conflict with each other."

**OSBORNE-HOWES** "Are you saying that you want to have conformity in this area?"

**DURANLEAU** "Yes. That is very important. And, as I said, we do expect this to be challenged, and we would like to be as prepared as possible in all avenues, and this is one of them."

**WARREN** "In response to Bud's concern about amortization and how far can you take it in terms of a legally non-conforming business, probably the closest thing is working its way through the court system right now is that they have done this on road signs where they wanted to abandon road signs. Marvin, I think you are quite familiar with some of the cases. They want to get rid of the billboards, so they are giving them a number of years to amortize those out four or five years, and those are working their way through the system, I think headed for the Supreme Court. Is that legal that you can take a guy's business and wipe it out simply by declaring it amortization?"

**KROUT** "I don't want to extend this any further than necessary, and there may well be court cases dealing with billboards because billboards are special issues and signs are special issues and they deal with the constitutional issue of speech. But there is case law throughout the country of using the Zoning Code to amortize, over a reasonable period, where the property owner can recover his investment, you can terminate non-conforming uses.

The State of Kansas hasn't had that provision until several years ago, when it was adopted. I would be glad to have the County Law office provide you with numerous cases where that has been upheld. I think that normally communities are very cautious about when and what kinds of uses they put it to. I remember a very difficult case involving a lead smelter that was within a residential neighborhood in Dallas, and that use was terminated and it was contested, and it was upheld, and I know that others are, too. So I don't think that this is an untested area in the courts. I think that there is clear statutory provision and there is a lot of case law that backs it up as long as the decisions are reasonable as applied to a particular property."

**MICHAELIS** "Okay. When you can bring this back, we will work it in."

**DURANLEAU** "All right. We will."

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**2. Approval of minutes for February 22, 2001.**

**MOTION:** That the Metropolitan Area Planning Commission approve the minutes of February 22, 2001 as presented.

**GAROFALO** moved, **BLAKE** seconded the motion, and it carried unanimously (13-0).

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**3. Consideration of Subdivision Committee recommendations**

**MICHAELIS** "We are going to pull Item No. 3/1. Are there any other ones that need to be pulled out? If not, we can take a motion on items 3/2, 3/3, 3/4 and 3/5. Is there anyone here in the audience to speak on any of these items?"

Subdivision items 3/2, 3/3, 3/4 and 3/5 were approved subject to Subdivision Committee recommendations. **WARREN** moved, **COULTER** seconded the motion, and it carried unanimously (13-0).

**3/2.**     **SUB2001-06** – Final Plat of SCHULTE COUNTRY STORAGE ADDITION, located north of K-42 and MacArthur Road, west of Maize.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Health Department has required a guarantee to abandon the existing lagoon upon the extension of sanitary sewer and water services.
- B. City Engineering has required petitions for future extensions of sanitary sewer and City water.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. A floodway reserve is needed across Lot 1, Block A, Schulte Country Store Addition. and should be established by separate instrument. A letter shall be provided from KDOT indicating their agreement to accept drainage occurring onto K-42.
- E. Access to this site is proposed from K-42, through an existing driveway located on the adjoining property to the southeast. A cross-lot access agreement will need to be granted by separate instrument. The face of the plat shall indicate, "Access control except two openings as shown on Schulte Country Storage Addition." County Fire Department has required construction of the access drive prior to any structures.
- F. 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.
- G. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved Protective Overlay (referenced as P-O #78) and its special conditions for development on this property.
- H. The applicant is reminded that a platting binder is required with the final plat tracing. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. On the final plat, the MAPC signature block needs to reference "J.D. Michaelis, Acting Chair".
- J. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of storm water.
- K. 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.)
- L. 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.
- M. 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 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. 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.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**3/3. SUB 2001-19** – Final Plat of WHEATLAND COMMERCIAL ADDITION, located on the south side of MacArthur Road, on the west side of Hoover Road.

- A. Municipal water services are available to serve the site. City Engineering has required a guarantee for sanitary sewer extension for Lot 2.
- B. As this site is adjacent to Wichita's City limits, the Applicant shall submit a request for annexation.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. City/County Engineering has approved the drainage plan. Improvements will be required at time of site development.
- E. The plat proposes one access opening both Hoover Road and MacArthur Road. County Engineering requests a cross-lot access easement within Lot 1 for the benefit of the adjoining unplatted lot to the north.
- F. The cross-lot access easements shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveways within the easements should also be addressed by the text of the instrument.
- G. 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.
- H. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- I. On the final plat tracing, the MAPC signature block needs to reference "J.D. Michaelis, Acting Chair".
- J. 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 storm water.
- K. 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.)
- L. 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.
- M. 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 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department

of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. 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.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**3/4. SUB2001-21** – Final Plat of BIG FOOT ESTATES, located on the north side of 55<sup>th</sup> Street South. West of 231<sup>st</sup> Street West.

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. A restrictive covenant is required that limits Lot 1 to non-domestic uses on the site until public sewer is available. A site plan is also required.
- B. The site is currently served by Rural Water District No. 4. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter from the water district to that effect.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. A Master Drainage plan needs to be submitted.
- E. County Fire Department needs to comment on the proposed access easement for Lot 2. No building shall be constructed on Lot 2 until the driveway is built.
- F. To provide for access to Lot 2, an access easement needs to be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument. County Engineering has required a 50-ft access easement, which will be relocated by the applicant to the west property line.
- G. 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.
- H. 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.
- I. On the final plat tracing, the MAPC signature block needs to reference "J.D. Michaelis, Acting Chair".
- J. On the final plat tracing, 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 storm water.
- K. 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.)
- L. 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.
- M. 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 316-729-0102) prior

to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. 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.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**3/5. SUB2001-35** - One-Step Final Plat of APEX ENGINEERING ADDITION, located west of Main Street between 11<sup>th</sup> and 12<sup>th</sup> Streets.

- A. Municipal services are available to serve the site. The utility easement covering the sanitary sewer lines should be increased to 20 feet where it is not located under the structures.
- 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 needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. The plat proposes three access openings along Main Street. Complete access control shall be dedicated along Main for the northerly lot (Apex property). The face of the plat shall indicate on the appropriate segments "access control except one opening" and "complete access control".
- E. The plat needs to indicate the right-of-way widths for abutting streets.
- F. Dimensions need to be added for the east line of Lot 1, Block 1; the east line of Lot 1, Block 2; the south line of Lot 1, Block 2, and the south line of Lot 2, Block 2.
- G. The legal description needs to be revised to accurately portray the land being platted.
- H. The applicant needs to contingently dedicate 5 feet of street right-of-way for Main Street to meet the standard 50-ft half street right-of-way. This dedication needs to be referenced in the plat's text.
- I. On the final plat, the MAPC signature block needs to reference "J.D. Michaelis, Acting Chair".
- J. The applicant shall guarantee the closure of the alley returns or construct the vacated alley returns to a private driveway standard.
- K. 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.
- L. 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 storm water.
- M. 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.)

- N. 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.
- O. 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 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. 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.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. 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.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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- 3/1. **SUB2001-05** – Final Plat of ECK SEVENTH ADDITION, located on the south side of Central, east of 183<sup>rd</sup> Street West.
  - A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. Standard soil testing is required.
  - B. The site is currently served by Rural Water District No. 4. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter to MAPD and Health Department from the water district to that effect.
  - C. City Water and Sewer Department requests a petition for future extension of City water services.
  - D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
  - E. County Engineering needs to comment on the status of the applicant's drainage plan. A master drainage plan is needed for review. The 20-ft drainage easements need to be increased to 40 feet.
  - F. The plat proposes one joint access opening along Central between Lots 1 and 2. The final plat shall reference the access controls in the plat's text. County Fire Department requests the increase of the width of the access opening from 30 to 40 feet.
  - G. The applicant shall guarantee the installation of the proposed streets to the 36-ft rock suburban street standard. County Fire Department has required the installation of the streets prior to any construction.
  - H. The plat's text shall state that the contingent street dedication shall become effective upon the platting of any adjacent subdivision having a street connecting thereto."
  - I. The joint access opening shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
  - J. On the final plat, the signature line for the County Commissioners Chair needs to indicate, "Carolyn McGinn".

- K. On the final plat tracing, the MAPC signature block needs to reference "J.D. Michaelis, Acting Chair".
- L. The County Fire Department needs to comment on the plat's street names. The cul-de-sacs should be named West 179<sup>th</sup> Street Court.
- M. The south line of 179th St. West abutting the contingent street dedication should be indicated by a bold line.
- N. On the final plat tracing, 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 storm water.
- O. 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.)
- P. 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.
- 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 316-729-0102) 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 be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. 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. KGE and Southwestern Bell have requested additional easements.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**MILLER** "At the Subdivision Committee meeting, for those who don't sit on the Subdivision Committee, we had an issue over where staff was asking for a pathway to be dedicated along with a drainage easement, and after two motions to approve without it, it ended up with a 3-3 vote to deny. So the applicant is appealing it to the full Planning Commission. In between the Subdivision Committee meeting and today, staff has met among ourselves and decided that we would drop that request at this point and take a look at that Parks and Pathway layout and make sure that the pathway is in the most advantageous position. So, for the time being, we are going to drop that request. Now we just need for the Commission to consider the full plat and do whatever you want to do with it."

**MICHAELIS** "Okay. What does that mean?"

**KROUT** "You were recommending approval without the requirement of a pathway."

**PLATT** "Mr. Chair, we need to clear up also, are we increasing drainage easement or not? I want to know what staff is recommending."

**MICHAELIS** "Okay. Do we need to open this up and hear from the applicant?"

**KROUT** "I would say so."

**MICHAELIS** "Why don't we ask Neil?"

**NEIL STRAHL**, Planning staff "That was a County Engineer requirement, increasing that drainage to 40 feet."

**MICHAELIS** "Okay. Let's hear from the applicant."

**RUSS EWY** "I am the agent for the applicant, with Baughman Company. That is correct, there were several issues; one was the attempt by the agent to waive the requirement to petition water, or to provide a water petition for future extension, when and if City water ever becomes available. The other one was the County Engineer's requirement to increase several utilities easements going from the ends of the cul-de-sacs to the east, from 20 feet to 40 feet. That was agreeable."

**MICHAELIS** "Are there any questions?"

**WARREN** "So I take it you are in full agreement of the staff comments with the exception of Item J that cover those parks and pathways?"

**EWY** "That is correct."

**MICHAELIS** "Is there anyone else to speak on this item? So, Item J has been withdrawn by the staff, is that correct?"

**KROUT** "Correct."

**MICHAELIS** "Okay. I will bring it back to the Commission."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments, with the exception of Item J, which has been withdrawn.

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

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**JERRY MICHAELIS**, Acting Chair, read the following zoning procedural statement, which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

I would like to remind the members of the Planning Commission that our bylaws require you to disclose any ex-parte contacts that you may have had regarding any of the applications on today's agenda. So I would ask you to please remember to disclose the nature of any such contacts you have had before we open the hearing on each case, and what if any impact that information may have on your opinion of the request.

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- 4/1. **VAC2001-00009** – Roger Lowenstien, Kurt Holland, Nancy Tsai Hill and Bryan Legally request to vacate Doris Street, described as:

That part of Doris Street described as follows: Beginning at the SE corner of Lot 17, Block B, Eck 4th Addition, Wichita, Sedgwick County, Kansas; thence S89deg44'25"W along the south line of said Lot 17, 30.00 feet to the west line of Doris contingent street dedication as platted in said addition; thence N00deg00'00"E, 270.00 feet to a point on the north line of Lot 1, Block B of addition, said point being the west line of Doris contingent street dedication as platted in said addition; thence N89deg44'56"E, 30.00 feet to the NE corner of said Lot 1; thence easterly 30.00 feet to the NW corner of Lot 1, Carl Smith 2nd Addition, Wichita, Kansas; thence southerly 270.00 feet to the SW corner Lot 1, Block 1, Replat of Part of Lots 23 and 24, R.A. Morris Tracts, Wichita, Kansas; thence westerly 30.00 feet to the point of beginning. The section of Doris Street generally located between 11<sup>th</sup> Street North and Memory Lane.

The applicant proposes to use the street for him and the other 3 abutting landowners. The applicant has stated that all the abutting landowners have maintained the Doris Street ROW since the development or ownership of their respective properties; Lots 1 & 17, Blk. B, Ecks 4<sup>th</sup> Addition, Lot 1, Carl Smith 2<sup>nd</sup> Addition and Lot 1, Block 1, (Replat of Lots 23 & 24) RA Morris Tracts. The Ecks 4<sup>th</sup> Addition Plat (approved July 29, 1997, by the WCC) identifies Doris as "contingent street dedication shall become effective in the event that the City of Wichita determines the need for the right-of-way for any street related purposes. This contingent dedication shall be a covenant running with the land and shall be binding on all heirs and subsequent owners of all parts of said property covered by said dedication." There is no reference to 'Doris contingent street dedication' in the dedications of the Replat of Lots 23 & 24, RA Morris Tracts or the Carl Smith 2<sup>nd</sup> Addition

The vacation would not dead-end Doris or any other street, in fact Doris Street (north of 11<sup>th</sup> Street N) currently dead-ends into Lots 4 & 5, RA Morris Tracts. Access to 11<sup>th</sup> Street N and Memory Lane for the 4 lots abutting Doris would be off the existing Smith Street. No properties would be denied access to existing streets by the vacating of Doris Street.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- 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, by publication in the Wichita Eagle of notice of this vacation proceeding one time March 15, 2001, 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 utility easement, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility easements described in the petition should be approved subject to the following conditions:
1. City Public Works recommends that the Doris contingent street dedication and the Doris Street ROW be vacated.
  2. Utility Representatives request that 30-ft utility easement in the Doris contingent street dedication be retained.
  3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  4. Traffic Engineering recommends that the Doris contingent street dedication and the Doris Street ROW be vacated.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

1. City Public Works recommends that the Doris contingent street dedication and the Doris Street ROW be vacated.

2. Utility Representatives request that 30-ft utility easement in the Doris contingent street dedication be retained.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. Traffic Engineering recommends that the Doris contingent street dedication and the Doris Street ROW be vacated.

**BILL LONGNECKER**, Planning staff, "This is a request to vacate Doris Street. The location of the request is between Memory Lane and 11<sup>th</sup> Street that abuts four lots. The reason for the request is that the abutting landowners would like to use this undeveloped right-of-way and this contingent dedication of Doris Street.

The Subdivision Committee heard the request and considered it on March 29. Staff recommended approval to the Subdivision Committee recommendation based with the four following conditions:

1. City Public Works recommends that the Doris contingent street and the Doris Street right-of-way be vacated.
2. Utility Representatives request that 30-foot utility easement in the Doris contingent street dedication be retained.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. Traffic Engineering recommends that the Doris contingent street dedication and the Doris Street right-of-way be vacated.

The Subdivision Committee concurred with staff's recommendations and conditions attached to the recommendations. Are there any questions?"

**MICHAELIS** "Thank you, Mr. Longnecker. We will hear from the applicant, please."

**ROGER LOWENSTEIN** "I live at 5125 West 11<sup>th</sup> Street, abutting the property that we are asking to be vacated."

**MICHAELIS** "Are there any questions of the applicant. Is there anyone else in the audience wishing to speak on Item 4-1? Seeing none, I will bring it back to the Commission."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments.

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

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**4/2. VAC2001-00010** – Kingman State Bank requests to vacate 100-foot and 35-foot building setback lines, described as:

A 35-foot building setback between Lots 1 and 2 and the 100' building setback along Maple and 135<sup>th</sup> Street West, all on Lot 1 of Auburn Hills Commercial 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas. Generally located southwest of the 6<sup>th</sup> Street South and 135<sup>th</sup> Street West intersection.

The applicant is requesting to vacate the 35 foot building setback between Lots 1 and 2 and the 100' building setback along Maple and 135<sup>th</sup> Street West, all on Lot 1 of Auburn Hills Commercial 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas. The proposed building will encourage on both setbacks; the 35-ft setback on the west and south sides and the 100-ft setback on the east side.

This particular development is an approved Community Unit Plan (CUP), development Plan 225. Any change to the recorded Building Setback Lines (the 35-ft and 100-ft Building Setback Lines) will require the applicant to submit an adjustment (as shown on 4 accompanying plans reflecting the to the proposed adjusted setback lines, for review by the Planning Director).

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- 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:

That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time March 15, 2001, which was at least 20 days prior to this public hearing.

That no private rights will be injured or endangered by the vacation of the above-described access control, and the public will suffer no loss or inconvenience thereby.

In justice to the petitioner(s), the prayer of the petition ought to be granted.

- B. Therefore, the vacation of the utility easement described in the petition should be approved subject to the following conditions.

1. Utility representatives request that the applicant retain a 20-ft x 20-ft area generally located on the north side of the plat, halfway between Lots 1 and 2, on the west side of Lot 2. They request the applicant also retain a 10-ft utility easement along the west side of Lot 1.
2. The applicant shall submit an adjustment to CUP-DP 225, reflecting no less than the minimum setback requirements for Community Unit Plans, as stated in the Wichita Sedgwick County Unified Zoning for review by the Planning Director.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

1. Utility representatives request that the applicant retain a 20-ft x 20-ft area generally located on the north side of the plat, halfway between Lots 1 and 2, on the west side of Lot 2. They request the applicant also retain a 10-ft utility easement along the west side of Lot 1.
2. The applicant shall submit an adjustment to CUP-DP 225, reflecting no less than the minimum setback requirements for Community Unit Plans, as stated in the Wichita Sedgwick County Unified Zoning for review by the Planning Director.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.

**BILL LONGNECKER**, Planning staff "This is a request to vacate a 100-foot and a 35-foot building setback line by the Kingman State Bank, located southwest of 6<sup>th</sup> Street and 135<sup>th</sup> Street West.

The applicant is requesting the 100-foot and 35-foot building setback lines to be vacated because of a proposal to build a 4,000 square foot bank and an 8,400 square foot building that will be used for mixed retail. The zoning is Limited Commercial.

The Subdivision Committee heard staff's recommendation on March 29. Staff recommended approval of this request with the following conditions:

1. Utility representatives request that the applicant retain a 20-ft x 20-ft area generally located on the north side of the plat, halfway between Lots 1 and 2, on the west side of Lot 2. They request the applicant also retain a 10-ft utility easement along the west side of Lot 1.
2. The applicant shall submit an adjustment to CUP-DP 225, reflecting no less than the minimum setback requirements for Community Unit Plans, as stated in the Wichita Sedgwick County Unified Zoning for review by the Planning Director.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.

The Subdivision Committee concurred with staff's recommendations and the attached conditions? Are there any questions?"

**MCKAY** "I have a conflict of interest on this item. I own property around this."

**MICHAELIS** "Okay. Are there any questions of staff? All right, thank you, Mr. Longnecker. The applicant, please."

**ROB HARTMAN** "I am with P.E.C., here on behalf of the applicant. We are in agreement with the staff comments. I also agree that this adjustment has already been made on the CUP back in November."

**MICHAELIS** "Are there any questions of the applicant? Okay, thank you. Is there anyone in the audience wishing to speak on this item? If not, I will bring it back to the Commission."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments.

**WARREN** moved, **COULTER** seconded the motion, and it carried unanimously (12-0-1).

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**ZONING:**

- 5a. **Case No. ZON2001-00013** – Sally and Lowell Loesch (owner and applicant) request zone change from "SF-6" Single-family residential to "GO" General Office; and
- 5b. **Case No. CON2001-00021** – Sally and Lowell Loesch (owner and applicant) request a Conditional Use to permit animal care, limited (small animal veterinary clinic) on property described as:

LOT 1, BLOCK 1, RAINBOW LAKES WEST SECOND SECOND ADDITION, SEDGWICK COUNTY, KANSAS EXCEPT PART TAKEN FOR ROAD ON SOUTH. Generally located north of west Central, 1/4 mile east of 135<sup>th</sup> Street West.

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

The application area is a 1.5 acres platted lot located on the north side of west Central, ¼ mile east of 135<sup>th</sup> Street West. The owners are seeking a zone change from "SF-6" Single-family Residential to "GO" General Office with a Conditional Use to permit "animal care, limited" (small animal veterinary clinic). The site is currently developed with single-family residence with one point of access to Central Avenue. The applicant indicates he would like to convert his garage – approximately 800 square feet – to a small animal veterinary clinic. The garage is located on the east end of the residence. The application area is located next to an "S" curve in Central Avenue. There have been instances where vehicles have failed to negotiate the curve and have ended up on the applicant's property. The applicant indicates that on a typical day his current practice sees 10 – 20 clients a day. He also states he needs only a small sign less than 2 square feet. The only kennels he intends to have will be indoors. Hours of operation are to be 7:30 A.M. to 5:30 P.M. Monday thru Friday.

The applicant's site plan depicts a 4,000 square foot structure with access off Central and with parking located east of the house.

Land surrounding the application area is used either for single-family residential or is in agricultural use. All surrounding property is zoned "SF-6" Single-family Residential or "SF-20" Single-family Residential. There is a pond located west of the house that appears to be part of the Dry Creek drainage system. The closest of these residences is approximately 300 to 400 feet from the home on the application area.

The "Unified Zoning Code" first permits "animal care, limited" in the "GO" General Office district with a Conditional Use subject to the following conditions: No noise or odors shall be discernable at the property line; treatment is limited to dogs, cats and other small animals; and all animals are to be harbored indoors. Parking requirements for "animal care, limited" are 1 space per 250 square feet of space. If the applicant uses only 800 square feet, then 4 parking spaces will be required, one of which must be a handicapped stall. Should the existing home be converted to animal care use, then 16 spaces would be required. All parking and drives must be paved with asphalt, asphaltic concrete or concrete. (A more detailed parking plan will have to be submitted and approved by the Zoning Administrator, per Article IV-A 13. Parking lot lighting and screening will also have to comply with code requirements, per Article IV-B.) If this request is approved, the applicant will also need to comply with landscape ordinance requirements.

The Sign Code permits 32 square feet of signage in the "GO" district.

**CASE HISTORY:** Rainbow Lakes West Second Addition was platted in December 1977. The site was annexed in 1998 and zoned "SF-6" Single-family Residential at that time.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Single-family Residential; agricultural  
SOUTH: "SF-6" Single-family Residential; single-family residences  
EAST: "SF-6" Single-family Residential; single-family residences  
WEST: "SF-6" Single-family Residential; single-family residences

**PUBLIC SERVICES:** The lot has platted access control allowing only one opening along Central. Traffic counts are not available at this location. Central is scheduled in the City's CIP to be improved to a four-lane urban arterial in 2008. Neither municipal sanitary sewer or water serve this site today. Water is scheduled to be available in 2006.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" depicts this site as appropriate for "low density residential" uses that provide for the lowest density of urban residential land use plus schools, churches and other similar uses. "Office Location Guidelines" contained in the "Comprehensive Plan" state that office uses should: generally be located adjacent to arterial streets; local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale commercial development and low-density office use can serve as a transitional land use between residential uses and higher intensity uses.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED, however if the Commission feels this request is appropriate, the Conditional Use shall be subject to the following conditions:

- A. The site shall be developed and maintained in conformance with a revised site plan approved by the Planning Director, and in conformance with Supplementary Use Regulations found in Article III-D 6 c of the Unified Zoning Code. As part of the site plan review, the applicant may be asked to move the location of the drive to a different location that would function better with respect to the "S" curve in Central.
- B. Uses permitted on the site shall be limited to "animal care, limited" and those uses permitted in the "SF-6" Single-family Residential district. The "animal care, limited" use shall be limited to a maximum size of 1,000 square feet of area.
- C. All applicable permits, including but not limited to those dealing with health, building and zoning, shall be obtained before the use can begin operation.
- D. Signage shall be limited to a maximum size of 6 square feet, which is not to be illuminated.
- E. A landscape plan shall be submitted and approved by the Planning Director prior to beginning clinic activities.
- F. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. Land surrounding the application area is used either for single-family residences or is in agricultural use. All surrounding property is zoned "SF-6" Single-family Residential or "SF-20" Single-family Residential. The character of the area is large-lot residential and agricultural.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "SF-6" Single-family Residential which permits single-family residences, churches and schools. The site is developed with a single-family residence that is occupied, appears to be well cared for, and appears to have maintained its value as a residence. The site is suitable for the uses for which it has been restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will introduce a zoning district and a use that is not currently present in the general area and is not in character with existing nearby uses.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Wichita Land Use Guide" depicts this site as appropriate for "low density residential" uses that provide for the lowest density of urban residential land use plus schools, churches and other similar uses. "Office Location Guidelines" contained in the "Comprehensive Plan" state that office uses should: generally be located adjacent to arterial streets; local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale commercial development and low-density office use can serve as a transitional land use between residential uses and higher intensity uses. This application is not consistent with plan recommendations for office uses since this location is surrounded by residential or agricultural uses and is located at mid-mile.
5. Impact of the proposed development on community facilities: Because of the relationship between the curve of Central and this site, traffic should be minimized at this location to avoid further potential for

accidents. The proposed use limited to the garage conversion will increase the daily trips from 10 to 20 to 30. If the residence is remodeled or redeveloped to 4,000 square feet of office use, it would generate 50 to 80 daily trips.

**MILLER** "This is a request for 'GO' General Office zoning with a Conditional Use to permit animal care limited for the purpose of having a small animal veterinary clinic. As you can see on the map, the application area is located just north of Central and 135<sup>th</sup>. Central runs along here (indicating) makes the 'S' curve and then goes back over to 119<sup>th</sup> Street. This is part of the Rainbow Lakes area. The application area is approximately an acre and a half in size. As you can see from this 1997 aerial, there are a number of single-family homes that are developed in the Rainbow Lakes Additions there. The land to the north, as best I could tell is used for farm ground. It looked like there were cows being pastured.

What the applicant proposes to do is to convert the garage into the small animal clinic. There is a site plan attached to your staff report that depicts how that would work. Upon our inspection of the site, it appears to be the way the property is pretty much laid out today. There is a driveway that comes north off of Central, just as you get past the 'S' curve and then they are showing parking to the east of the garage area in that site plan. (Indicating) This is a look at the application area. This is the home that is shown on the site plan; this is the garage area that would be converted. We pulled into the driveway here as this 'S' curve goes through. That is what people see as they come down Central to the west and then make that curve.

The applicant has indicated that in his current practice, he sees between 10 and 20 clients on a typical day. His hours of operation are 7:30 a.m. to 5:30 p.m. The surrounding area is zoned either 'SF-6' Single-Family residential or 'SF-20' Single-Family. The Code first permits 'animal care, limited' in the 'GO' General Office district with a Conditional Use and is subject to 3 conditions. Those are that the noise and odor cannot be discernable at the property line; that the practice has to be limited to dogs, cats and other small animals; and any animals that are harbored on site have to be harbored inside. So you can't have any outdoor kennels.

The 'GO' district permits a 32 square foot sign and the applicant has indicated that if this were to be approved, he doesn't think he needs much more than a couple of square feet. Central is scheduled to be improved to a four-lane street in 2008. There isn't any municipal sewer or water service out there today. Water is scheduled to be available in 2006. The office location guidelines contained in the Comprehensive Plan indicate that offices should generally be located adjacent to arterial streets and that local service oriented offices should be incorporated within or adjacent to neighborhood and community scale commercial development and low density office use can serve as a transitional land use between residential uses and higher intensity uses.

The Planning staff is recommending denial for this request, primarily because this is a mid-mile location. It is surrounded on three sides by existing single-family homes and to the north is an agricultural use. This did go to the DAB board on Monday night and there were at least three homeowners' associations that were represented there and they are all in opposition to the request. The DAB did recommend denial for the request. However, if you think it is an appropriate use, there are some conditions contained on Pages 3 and 4 under 'a' through 'f' that we would recommend be attached to the Conditional Use. With that, I would try to answer any questions."

**OSBORNE-HOWES** "How will the re-do of Central affect this? I can't remember what is going to happen there."

**MILLER** "They are going to four-lane it. The last word that we had was that the 'S' curve was not going to be modified. I don't know whether that will be by the time they actually get ready to do it, because it has not been designed. I think design is set for 2003 or 2004. The folks I talked to in Public Works said that at this point they didn't think that was going to be modified."

**OSBORNE-HOWES** "Is he currently operating? Is that why you said that he is seeing 10 to 20 clients per day?"

**MILLER** "He has a clinic at another location."

**OSBORNE-HOWES** "Oh, okay."

**JOHNSON** "Dale, here a while back we had a case, if I remember right at Central and 135<sup>th</sup>. What is the status of all of that zoning in that area now?"

**MILLER** "The Dugan property over here (indicating), that one has been approved and has been platted and is in the process. (Indicating again) this one was for Neighborhood Office if I remember right, and I think they just got a platting extension because the husband died, so it is in process and has not been completed yet."

**JOHNSON** "And then across the north of Central on the west side, was there one there, too?"

**MILLER** "No, they are going to re-align this (indicating) so it comes around."

**JOHNSON** "I know at the time there was a lot of concern about that whole area east of 135<sup>th</sup> with drainage and flooding and we saw lots of pictures from that neighbor. Do you remember? It seems like there was even water around this residence?"

**MILLER** "Well, of course, the pond where Dry Creek runs right through here (indicating) and that is what has been backed up to create that pond. I haven't actually seen the revised FEMA maps but it is my understanding that they have revised this area, so I am sure that the floodway in there is probably larger than what it was originally."

**WARREN** "As we moved west on Central and modified Central so that it eventually ties back into now unimproved Central, didn't that little piece we created become 'LC' though?"

**MILLER** (Indicating) "This part is 'LC'. It is part of Dugan's project."

**WARREN** "The one right across the street from it is 'GO' subject to platting, right?"

**MILLER** "I think it is 'NO' Neighborhood Office. I think they asked for 'LC' and they got bumped down to 'NO' if I remember right."

**WARREN** "Okay. But if the zoning has been approved, it is subject to some platting."

**MILLER** "Right. Once the plat is done, then the zoning would be effective."

**COULTER** "In Part A, you mentioned about changing the drive location. Where would you propose a better location to be?"

**MILLER** "I did talk with the Traffic Engineer late yesterday and because of the way this curve is, there have been at least three instances where people have not been able to traverse the curve and have come off and either landed on his property or maybe even into his house. So we thought that the location of this driveway here might not be the best location given the geometry there. But according to the Acting Traffic Engineer, he says that is the best place for it, given the locations. So we would not be asking for that to be moved, at least under the current Traffic Engineer."

**MICHAELIS** "Are there any further questions of staff? Thank you, Mr. Miller. May we hear from the applicant, please?"

**DEAN LOESCH** "I am a veterinarian here in town. I have a practice at 13<sup>th</sup> and Meridian, which I am in the process of selling due to heart surgery, etc., a couple of years ago, I plan on semi retiring. That is the reason I want to operate a small animal clinic out of my home on a limited basis type situation.

I understand the need to isolate a business from the local residences, etc. I think, as you can tell by the pictures there, and I have some pictures here if you would like for me to pass them around, that do a better job of showing how well my property is isolated from the surrounding neighborhood. There is a dairy farm; he uses that for his dry cows and there is a bog hole down there that washes into the Cowskin Creek that creates quite a bit of odor and it is undesirable to look at. But I have lived with it for 17 years because he was there before I was. I have no complaints with it. But it doesn't make it real good for the rest of the neighborhood necessarily.

I am isolated from the neighborhood to the east and to the south by Central and also by a grove of trees. I took some pictures off of the top of my house today, pointing all four directions from my house. Even now, with all of the leaves off of the trees, it is very hard to see any other residence. The closest residence to my house is about 350 feet. Central is definitely an arterial, and like they said, they are going to be enlarging it to four lanes. It was my understanding, the last time I talked to them was that when they do that, Central is going to stay the 'S' curve, and the road will be moved to the south rather than to the north. Not moved, but the other two additional lanes will go on the south side of the road, rather than on the north side of the road. But, of course, that is subject to change.

I am isolated from the neighbor to the west of me. That is the one that has the best shot of my house. He has the best shot of the best side of my house, which has quite a bit of landscaping and stuff done to it, but we are isolated from him by a pond as well as trees. Like you said, there is Neighborhood Office and Light Commercial right down the street on 135<sup>th</sup> Street. Due to my ignorance, back in 1983, I operated a small animal clinic mobile practice out of my home. I had between 3 and 7 clients coming twice a day, morning and evening to my home and I made house calls during the day. At that time, I was in the County and was unaware of the fact that I needed to have County zoning to run a business out of my home, but I did it for 10 years due to my ignorance and the ignorance on the part of the officials that would have shut me down. They didn't know I was doing it, I guess. None of my neighbors complained, several of them used my facilities that had pets. That is all I have to say."

**MICHAELIS** "Are there any questions of the applicant?"

**MCKAY** "Sir, will you have outside runs or storage or anything?"

**LOESCH** "No. Not at all. My understanding is that I can't have those at my present facility at 13<sup>th</sup> and Meridian and those are illegal anyplace in the city limits, regardless of the zoning."

**MICHAELIS** "Are there any further questions? Thank you, sir. Is there anyone else in the audience wishing to speak in favor of this item? In opposition? Seeing none, we will bring it back to the Commission."

**OSBORNE-HOWES** "I have a question. A veterinarian cannot do anything out of his or her home?"

**KROUT** "It is specifically listed as a home occupation, but it is not permitted in a residential district."

**WARREN** "Well, I went out and looked at the property, too, and I would have to think that I don't see this use that he is asking for as being any more intense than a home occupation, say of a hairdresser, and I am sure that we would allow that. If he is going to use it as kind of a semi-retired type business, I surely have no opposition to it. I think it is a reasonable use of that land."

**PLATT** "I have a lot of problems with this case. To begin with, it violates the whole concept of trying to put commercial activity in the middle of what we have set up as the mile intersections, where it belongs. Once you start one, then the next one comes in, and the next one, and as the DAB folks say, 'there goes the neighborhood'. With the residents completely opposed to it, it seems to me that we are violating a very, very fundamental land-use principal if we should support this. Secondly, I am very, very nervous about having a clinic in an area not served by water and sewer. It seems to me that would raise some problems. I don't think I am going to support this."

**OSBORNE-HOWES** "I am familiar with that, but I still drove by it again and looked at it. I don't believe I will support it either, although I certainly understand why someone in a semi-retirement situation would want to have something like this out of their home. I have sympathy for that, and I thought about it, but you really will have commercial activity moving all the way through there. I know all of the long discussions we have had with neighborhoods about wanting to limit the commercial activity, even at the intersection. This really isn't at an intersection, it is halfway through and it will strip that out, and for that reason alone."

And I also wondered why there was a need to have 'GO' for the entire lot if he was just going to use part of it."

**JOHNSON** "If this thing is approved, would there be parking requirements by Central Inspection, or would this just end here?"

**KROUT** "There is a parking requirement. I don't think they striped it out in their site plan, but by the Conditional Use, if he uses it for a clinic, it would be limited to 1,000 square feet and I think the parking requirement a minimum of four spaces."

Because it would have a base zoning of 'GO', he would have the ability to convert any amount of the house to office use and then for every 250 square feet of office, he will have to provide one parking space."

**WARREN** "I have a little trouble when we talk about commercial and then we talk about 'GO'. I have a little trouble relating to those two. One is a lot harsher than the other. The other thing is, do I understand, Marvin, that this would be applicable, maybe to a Protective Overlay, which if we would give him this 'GO', subject to a Protective Overlay that would limit his use of that to this specific use?"

**KROUT** "Yes, you could. That is an option for the Commission. You could either limit it to this use or you could limit it to 1,000 square feet for any use that is permitted in General Office. I guess I would just caution the Commission that not every case ought to become a Protective Overlay or we are going to create an administrative nightmare for the zoning enforcement people when every tract of land has its own conditions."

**WARREN** "Except that if that is the difference between the man being able to use this land as he would like or not, why then....I don't think he has any intent to do anything with that land, from what I can see, than for what he is requesting. So if we could accommodate that need with a Protective Overlay, I certainly wouldn't have any problem with it."

**MARNELL** "This one bothers me as well, because that is sitting right square in the middle of a residential area. This isn't adjacent or a quarter of a mile away. If it ends up being zoned General Office, it is zoned General Office. I don't think I can be in favor of it."

**MICHAELIS** "I think I would echo that sentiment. A lot is based on Dr. Platt's comments, but this is a tough deal. I am also like Ms. Osborne-Howes. I have sympathy for the individual that wants to do it and everything else, but it is just probably not a good location for it. Are there any other comments?"

**MCKAY** "I have a question. This couldn't be left the same zoning it is and give a Conditional Use?"

**KROUT** "No. We don't specify Conditional Uses in residential districts and we don't have one for a Vet Clinic in residential."

**MCKAY** "And it doesn't qualify under home occupation?"

**KROUT** "Right, it doesn't qualify as a home occupation."

**HENTZEN** "It doesn't? Why?"

**KROUT** "There is a list of prohibited uses. If you like, I could read them to you. There are about 8 or 10 uses. Office-type uses are permitted as home occupations, and if you think that maybe a Vet Clinic ought to be one that ought to be permitted, then I think you could revisit it at some point in the Zoning Code, but there is a list of uses that are specifically not permitted in the residential districts and they include animal care, auto and other vehicle repair, funeral homes, kennels and stables, medical and dental clinics or hospitals, renting of trailers, cars or equipment, restaurants, tattooing and body piercing, which we talked about at one time as a home occupation; tourist homes and contractor's storage. Some of those uses are permitted in rural areas where we have larger lots, but not in the urban 'SF-6' zone."

**MICHAELIS** "Are there any further comments? I would entertain a motion."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the zoning, uses and character of the neighborhood; the suitability of the subject property for the uses to which it has been restricted; the extent to which removal of the restrictions will detrimentally affect nearby property; conformance of the requested change to the adopted or recognized plans and policies; and impact of the proposed development on community facilities; I move that we recommend to the governing body that this application be denied.

**OSBORNE-HOWES** moved, **GAROFALO** seconded the motion, and it carried with 12 votes in favor. Warren opposed.

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- 6. **Case No. ZON2001-00014** – Sedgwick County Zone Change from "LC" Limited Commercial and "SF-20" Single-Family Residential to "LC" Limited Commercial and "OW" Office Warehouse for a construction yard. Generally located north of Pawnee approximately 1/8 mile east of Webb Road.

**MICHAELIS** "We need to defer this case. Is there anyone here in the audience wishing to speak on this item?"

**MOTION:** That the item be deferred until the May 10 meeting.

**JOHNSON** moved, **LOPEZ** seconded the motion, and it carried unanimously (14-0).

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- 7a. **Case No. ZON2001-00008** – Sun Chancellor, L.P., dba Claremont Companies (owner); Robert W. Kaplan (agent) request zone change from "MF-18" Multi-Family to "LC" Limited Commercial; and

- 7b. **Case No. CUP2001-00004 DP- 62 Amendment #7** – Sun Chancellor, L.P., dba Claremont Companies request an amendment to DP-62 Chelsea Station C.U.P. to create Parcel 13 for commercial use on property described as:

ZON2001-00008

That part of Lot 3, Block 1, E.E. Jabes Addition to Wichita, Sedgwick County, Kansas described as follows: Beginning at the Northeast corner of said Lot 3; thence South 00 degrees 33'13" East along the East line of said Lot 3, 820.00 feet to the Southeast corner of said Lot 3; thence South 89 degrees 26'47" West along the South line of said Lot 3, 250.00 feet to the P.C. of a curve to the right in said South line; thence Westerly along said curve, having a central angle of 18 degrees 25'33" and a radius of 350.53 feet, an arc distance of 112.73 feet, (having a chord length of 112.24 feet bearing North 81 degrees 20'26" West), to the P.C. of a curve to the left; thence Northerly along said curve, having a

central angle of 27 degrees 55'39" and a radius of 340.00 feet, an arc distance of 165.73 feet, (having a chord length of 164.09 feet bearing North 13 degrees 38'43" East), to the P.T. of said curve; thence North 00 degrees 19'07" West, 93.98 feet; thence North 89 degrees 40'53" East, 2.71 feet; thence North 00 degrees 52'58" West, 74.81 feet; thence North 01 degree 08'58" East, 22.27 feet to a corner of a 20 foot water easement (Film 374, Page 1195); thence North 00 degrees 00'15" East along the West line of said 20 foot water easement, 265.00 feet to a corner of said 20 foot water easement; thence South 89 degrees 59'45" East along the North line of said 20 foot water easement, 13.75 feet; thence North 00 degrees 15'48" West, 187.07 feet to a point on the North line of said Lot 3; thence North 89 degrees 26'47" East along the North line of said Lot 3, 299.94 feet to the point of beginning.

CUP2001-00004

Lot 3, Block 1, E.E. Jabes Addition to Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of Rockhill and Rock Road.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report presented at the MAPC meeting held February 22, 2001, and the memo dated April 5, 2001.

**BACKGROUND:** The applicant is requesting that Parcel 9 be divided into two parcels. Parcel 13, the new parcel, would be 5.96 acres in size and be located along the west side of Rock Road, north of Rockhill. It would be zoned "LC" Limited Commercial. The remainder of Parcel 9, which is 7.34 acres, would keep its current zoning classification of "MF-18" Multi-Family. Also, the applicant is requesting that a second point of access be allowed on the northern edge of the tract along Rock Road.

Currently, Parcel 9 is developed with Sundance Apartments. The applicant proposes to raze the clubhouse and the ten apartment buildings nearest to Rock Road. The property would be redeveloped with the following commercial uses: retail, general; restaurants, excluding drive-in and drive-through; banks or financial institutions; ATM; offices; medical services; personal care services; and personal improvement services. Maximum gross floor area would be 31,167 square feet (12 %), with a maximum of four buildings and a maximum building height of 35 feet.

DP-62 is part of a large Residential and Non-Residential Community Unit Plan begun in the 1970s. Total size of the C.U.P. is 160 acres. It is a mixed-use development with uses ranging from single-family residential to the shopping center located at the intersection of 21<sup>st</sup> Street North and Rock Road. The shopping center is now anchored by Best Buy, but includes a site for a discount store, small retail and service businesses, and two restaurant pad sites. The C.U.P. has another apartment complex along 21<sup>st</sup> Street North, as well as a day care and offices. There are also offices along Rock Road south of Rockhill. Rockhill/Broadmoor serves as the collector through the C.U.P. The residential uses south and west of Rockhill/Broadmoor include duplexes, single-family residences and townhouses.

The property to the east of Rock Road is developed with three restaurants and the Bradley Fair Shopping Center.

**CASE HISTORY:** The application area is platted as Lot 3, Block 1 of E.E. Jabes Addition, recorded June 5, 1974. The C.U.P. was originally approved in January 29, 1974. An administrative adjustment was approved on January 25, 1979, to increase the combined number of dwelling units permitted on Parcels 8 and 9 from 491 to 495 dwelling units. As a condition of this administrative adjustment, the two parcels were tied together as a unit and the developer guaranteed to keep the seven acres on the northern half of Parcel 9 (Lot 4, Block 1, E.E. Jabes Addition) as open space for recreational purposes of the apartments and other residential uses nearby (Restrictive Covenant dated April 29, 1979, inuring to the benefit of the City of Wichita and remaining in full force and effect until April 25, 2004).

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC" Limited Commercial	Shopping Center, restaurants
EAST: "LC" Limited Commercial	Bradley Fair Shopping Center, restaurants
SOUTH: "GO" General Office	Offices
WEST: "MF-18 Multi-Family	Apartments, townhouses, duplexes, single-family

**PUBLIC SERVICES:** The site has access directly onto Rockhill, where there is a signalized intersection with Rock Road, and is allowed one point of access onto Rock Road. This access point is located near the center of the parcel's frontage on Rock. The applicant has asked for a second point of access near the northern edge of the property.

This segment of Rock Road has one of the highest levels of traffic of any arterial street in Wichita. Average daily traffic in 1997 was 28,709 vehicles per day. This is projected to increase to 37,948 by 2030. A traffic study ("Bradley Fair Shopping Center Traffic Impact Study, Wichita, Kansas," HWS Consulting Group Inc., February 3, 1999) identified improvements on Rock to handle the large traffic volumes. One of these improvements is to put a

raised median with lengthened storage for left-turns from Rock to Bradley Fair Parkway. When this raised median is installed the existing entrance to Parcel 13 would become right-in/right-out only. The requested second point of access also interferes with the storage lane for the left turns.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita Land Use Guide to the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan shows this area for high-density residential use.

**RECOMMENDATION:** High-density residential uses generate significantly lower volumes of traffic than commercial activities. The apartments generate about 1000 trips per day. If the application were developed with a quality restaurant, a high-turnover restaurant, some general retail, and a bank, the estimated traffic would be three times the rate generated by the apartments. While the change may seem to be relatively minor with respect to the amount of commercial development already located along the North Rock Road corridor, it could compromise the effectiveness of the public improvements slated for Rock Road.

This would worsen the situation on North Rock Road, and be contrary to the efforts underway as a result of the HWS traffic study to alleviate traffic congestion. These improvements involve eliminating several left-turn movements in order to move traffic on North Rock Road without as many points of conflict.

Further, any additional opening is moving in the opposite direction of improving traffic flow on Rock Road. The applicant has not provided an update to the HWS traffic study or suggested any additional traffic improvements to compensate for the diminished level of service that could result from this intensification of development.

The applicant has indicated that they intend to replace the apartments removed along North Rock Road with more apartments on the northern portion of Parcel 8 along Broadmoor. Yet this is the area governed by the Restrictive Covenant that tied development of the two parcels together as a single development and pledged not to convert the seven acres of open space into apartment use. Staff feels apartment development using this seven-acre area is contrary to the approved C.U.P. and should not be allowed unless the C.U.P. is amended to specifically permit this change. To date, the applicant has not filed a request to amend the C.U.P. in this manner. Further, should the C.U.P. be amended and the commercial development also be permitted, this would simply add more traffic in the vicinity along North Rock Road and 21<sup>st</sup> Street North.

Based on these conditions, plus the information available prior to the public hearing, Staff recommends the request be DENIED.

However, should MAPC choose to approve the request, Staff would recommend approval be subject to the following conditions:

- A. APPROVE the zone change (ZON2001-00008) to "LC" Limited Commercial,
- B. APPROVE the Community Unit Plan Amendment #7 (DP-62), subject to the following conditions:
  1. Access on North Rock Road shall remain as one point of access only, as shown on the C.U.P. and the subdivision plat. This point of access would become right-in/right-out upon completion of the scheduled improvements to North Rock Road.
  2. Complete access control shall be provided on Rockhill for 250 feet from the intersection with Rock in order to allow storage length at the traffic signal.
  3. Additional right-of-way shall be dedicated along Rockhill to allow additional lanes and to match with lanes opposite the intersection on Bradley Fair Parkway.
  4. The traffic signal at Rock and Bradley Fair/Rockhill shall be upgraded to provide for left-turn phasing.
  5. No apartment units shall be constructed on the northern seven acres of Parcel 8 unless the request is filed and approved for such amendment to the C.U.P.
  6. General Provision #1 shall be revised to reflect conversion of Parcel 13 from a residential to a commercial parcel.
  7. General Provision #7A shall be revised to require a six (6) to eight (8) foot solid or semi-solid wall constructed of stone, masonry, architectural tile or other similar material (excluding wood or woven wire) on the west property line of Parcel 13.
  8. General Provision #7E shall be added to require that landscaping on Parcel 13 be provided per the Landscape Ordinance.

9. General Provision #8 shall be revised to add Parcel 13.
10. General Provision #10 shall be revised to add:  
For Parcel 13, all freestanding signs on Rock Road and Rockhill shall be monument type with a maximum height of 20 feet, and shall be spaced a minimum of 150 feet apart regardless of leasing or ownership of the parcel. No sign shall exceed 150 feet in size. No flashing or moving signs shall be permitted. No portable or off-site signs shall be permitted.
11. Add a general provision to state that trash receptacles and roof-top equipment shall be screened to reasonably hide them from ground level view, with screening being constructed of materials and/or landscaping compatible with and complementary to the exterior of the buildings to which they provide service. Loading docks and service areas shall also be screened from Rock Road, Rockhill and the residential areas to the west with screening walls and/or landscaping approved by the Planning Director.
12. Add a general provision to state that a plan for a pedestrian walk system shall be a requirement of the C.U.P. The walk system shall link proposed buildings with the sidewalks along Rock Road and Rockhill.
13. Add a general provision to state that all buildings in Parcel 13 shall have similar materials, color, and texture. Metal shall not be used as a predominate exterior building material on any facade.
14. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
15. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
16. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
17. The applicant shall submit 4 revised copies of the C.U.P. 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: Commercial uses on property zoned "LC" Limited Commercial are located to the north and east of Parcel 13. Office uses are located on the "GO" General Office tracts to the south. The properties to the west are zoned "MF-18" and developed with a variety of residential uses, including single-family, duplex, townhouses, and apartments.
2. The suitability of the subject property for the uses to which it has been restricted: The site is already in use as the Sundance Apartments and could continue to be used in this manner.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conversion of the property from apartments to commercial uses would generate more traffic and would deteriorate the level of service on North Rock Road. If left-turn movements in and out of Parcel 13 to Rock Road are allowed, it will jeopardize the planned improvements by conflicting with left-turn storage for the signalized intersection at Rock and Bradley Fair/Rockhill.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial use is not in conformance with the Comprehensive Plan, although the properties to the north and east are shown for commercial use.
5. Impact of the proposed development on community facilities: The conversion from apartments to commercial use will add significant traffic to Rock Road and 21<sup>st</sup> Street North, and contribute to a detrimental impact on the level of service for Rock Road.

**GOLTRY** "This case was heard on February 22. It is the case to convert 10 units of apartments on Rock Road that are now the "Sundance Apartments" into retail types of uses, asking for 'LC' Limited Commercial zoning. If you recall the hearing we had six weeks ago, the issues circled around whether or not the addition of this 31,000 square feet of additional retail space would cause detrimental impacts on the flow of traffic along Rock Road, particularly in view of the fact that the city is expending a lot of funds for additional improvements, and whether this would be an appropriate land use.

I believe I have placed, at your table today, a memo that is the result of our transportation staff analysis of the traffic impacts on Rock Road. I am going to ask Jamsheed Mehta, and James Johnson to present some results on a simulation that will demonstrate that once we looked at the traffic impacts, it does look as if Rock Road can accommodate the additional traffic that would be generated from this land use. So staff is now recommending approval, subject to replatting; and approval of the CUP amendment, subject to revised transportation improvements that would be compatible with ensuring this adequate traffic flow. The remaining conditions that are contained on your memo on Pages 2 through 4 are the same conditions as were presented in the original staff report on February 22. The findings are revised to reflect a recommendation for approval, based on the re-analysis of the traffic flow. At this point, I will turn it over to Jamsheed.

James Johnson and Jamsheed Mehta from Planning Staff presented a computer simulation of the effect of traffic on Rock Road from Rockhill to 21<sup>st</sup> Street. Three time periods were analyzed and presented. The first scenario used existing conditions (present geometry and existing land use). The second scenario reflected improvements on Rock Road as approved by the City Council and also reflected a change in the land use (as proposed) from multi-family apartments to mixed retail/commercial. The period reflected in this scenario was assumed to be 2002-2003. The third and final scenario used projected traffic reflecting the year 2030 with fully utilized land uses along the study corridor.

The main objectives of the analysis are (1) to see if left turns into the proposed property can be safely accommodated; (2) the best location for a private driveway, if one were allowed; and (3) what will the impact of the change in land use, and therefore the trip generating characteristics of the proposed land use, have on the street system.

Assuming that the majority of northbound traffic into the proposed site will be arriving from the south, and will use the existing signalized intersection at Rockhill/Bradley Fair Parkway, therefore, there will be some gaps in traffic if low volumes are assumed for the northbound left turn into the site at a location across from the "Outback-Eddie Bauer" entrance. This location was deemed to be relatively safer on Rock Road and further away from the Rockhill intersection so that back-up queues from the signalized intersection are not impacted. Left turn movements out of the site are not recommended as it would be unsafe and as it would lower the expectations of the City's access management and traffic flow improvements plans on this stretch of Rock Road.

The impact of this change in land use at the 21<sup>st</sup> and Rock Road interchange is minimal assuming that the total floor area in this proposal is about 32,000 square feet. Obviously, if the number of apartments lost due to this change in land use were subsequently replaced later, then a separate study would be required to compute the impact.

The analysis provide specific transportation related recommendations:

1. One point of access will be allowed on Rock Road, and will be located near the north property line and across from an existing driveway.
2. The existing driveway serving the apartment complex will be removed.
3. A left-turn storage lane shall be installed in the center median on Rock Road with a 150-foot storage length to allow northbound left turn movements into the proposed site.
4. A standard acceleration/deceleration lane shall be provided to the Rock Road driveway.
5. As per City of Wichita regulations, the median opening may be closed at any point in time if the traffic conditions so warrant.
6. The main entrance to the site will be from Rockhill Road, through a driveway that will be located approximately 250 feet west from the Rock Road intersection.
7. If the applicant desires to locate an additional driveway closer to the signalized intersection, then that driveway will serve the right-turn-in only movement, and a raised center median will need to be installed back from the Rock Road intersection to ensure that there are no left turns permitted. A deceleration lane should serve such a driveway from Rock Road, and this lane should be terminated at the driveway.
8. Additional right-of-way shall be dedicated along Rockhill Road to allow the additional lane and the raised center median, and these lanes will match the lanes opposite the intersection on Bradley Fair parkway
9. The traffic signal at Rock and Rockhill shall need to be upgraded to accommodate the geometric changes.

10. A left-turn storage lane of 150 feet (plus taper) shall be installed on Rockhill Road for eastbound-left turn movements at the signalized intersection.

**MICHAELIS** "Are there any questions of Jamsheed?"

**PLATT** "Show me where the raised medials are going to be on Rock Road. Are you going to require the raised medials on Rock Road?"

**MEHTA** "No. The proposed City Council approved plans—whatever you see in red on the screen is the new feature added to the configuration, so beginning from here (indicating), this is a very short left-turn lane. It is going to be elongated, so they have to extend that median all the way to come up in line with the existing median. So you will have a median all the way from Bradley Fair and Rock Hill Road to what I am calling the Outback entrance. In order to accommodate a left turn this way (indicating), you will have to cut a part of that median and provide storage lanes over there, about 150 feet deep.

Over here (indicating), there are some other median breaks, but what they are going to do is elongate this storage length all the way down. When they do that, they are getting into the storage for this northbound-left movement, which is in conflict with movement, turning east into Bradley Fair. In order to accommodate that left turn, we will have to stop that movement from happening or any of the other left turns in and out of these sites. Leaving only one left turn movement, the only one to serve what is Best Buy and used to be ShopKo and some of the others over there.

If you didn't allow them any left turns, they don't have any other way of getting in there because you have another problem over here (indicating) This left turn lane, this opening would be blocked by dual left-turns going all the way far back. That would be an only exception. The original plan of the City of Wichita Public Works and their engineers was not to allow for that opening either for Dillon's and MacDonald's, but that was not eventually approved.

**WARREN** "Jamsheed, as I understand, you are recommending approval, subject to certain conditions that you have outlined here. Those conditions would be that the Best Buy entrance would be then a full functional intersection for this application?"

**MEHTA** "No. Not Best Buy. The one that we are calling Sundance or Outback is the one. (Indicating) This is Best Buy and this is Sundance."

**WARREN** "I thought you were closing Sundance, though, for them."

**MEHTA** "Sundance would have not a full-movement intersection."

**WARREN** "But Sundance is there now, in this location, isn't it?"

**MEHTA** (Indicating) "This leg is not. It is at the intersection. It is going to be blocked by this long median. The only other opportunity to have a full movement intersection is allowing for right-ins, right-outs, left-ins, no left-outs."

**WARREN** "Okay, what about the other side of the street. Would they be doing the same thing, then?"

**MEHTA** "They have a left-in and a left-out today. By the time this is all done, that left-out movement will be restricted."

**WARREN** "Uh huh. And then clear down at the south end on Rock Hill, then you are saying a complete access control back to what, 250 foot?"

**MEHTA** "The initial recommendation to you from a month ago was no openings to 250 feet back, so you are replicating what is on the Bradley Fair Parkway side, which is you go back to 250 feet and you get your opening. Anything in between, there are some exceptions where you can have a right-in, right-out. In this case, they were seeking to find a right-in movement at 100 feet and you look to that. If it is a right-in only and if it is protected by a median across, then we are okay."

**WARREN** "And then their next opening would be on west?"

**JAMSHEED** "Further west at 250 feet back from Rock Road."

**WARREN** "And that would give them a right-in, left-out?"

**JAMSHEED** "That will give them all movements."

**BARFIELD** "So, the traffic, in order to make a left turn over into Bradley Fair would have to go all of the way down, you are saying, to Rock Hill?"

**MEHTA** "Northbound, making a left turn, goes into Bradley Fair. At Rock Hill over here and Bradley Fair Parkway on the other side. The same street, yes."

**BARFIELD** "But there is none between Rock Hill and 21<sup>st</sup> Street?"

**MEHTA** "Entrances do you mean?"

**BARFIELD** "Right."

**MEHTA** "There are quite a few."

**BARFIELD** "For a left turn, southbound."

**MEHTA** "Into Bradley Fair, left turns will be restricted, that is correct. Right now, they can make lefts here (indicating), here, here and they can make lefts at the signalized intersection of Bradley Fair. In the future, they cannot make one here; this is open for now, and the left-in stays, but the left-out will be restricted and the next one is a left-in and left-out at this location."

**BARFIELD** "I thought I understood you to say that there would not be any left turns in between 21<sup>st</sup> and Rock Road."

**MEHTA** "This would allow it. Left ins would still be allowed."

**COULTER** "So at the Sundance entrance that you propose, those and some of the others would still not be signaled, they would just be a stop sign?"

**MEHTA** "Yes, they would be driveway entrances off of Rock Road so the stop sign is on the driveway side and Rock Road continues as it is."

**OSBORNE-HOWES** "Are these recommendations just based on the application, or are these in the works anyway?"

**MEHTA** "Our recommendations take into consideration the geometry as approved by the City Council and what they are planning on doing in the next year, and the applicants 31,000 square application for commercial in place where there are 160 dwelling units."

**OSBORNE-HOWES** "But if that application isn't approved, then you would not be supporting those?"

**MEHTA** "If they make something more intense than what would be coming out of those 31,000 square feet, then it would change somewhat. All of this is predicated on a lot of assumptions. We are assuming the minor movement being at that left turn, turning into their entrance."

**OSBORNE-HOWES** "I am just trying to get this straight. If we approve this application today, this means that, based on your recommendations, that means because of this new application we would have some changes made to getting into Bradley Fair?"

**MEHTA** "No. Bradley Fair. The improvements on Rock Road are happening anyway. Our recommendations aren't affecting that. I guess we showed you a lot more than was needed."

**OSBORNE-HOWES** "That's okay. I just wanted to get clear on that."

**MICHAELIS** "Are there any other questions? Thank you, Jamsheed. Can we hear from the applicant?"

**BOB KAPLAN** "I am representing the applicant. We accept those conditions. This is one of those cases where the granting of deferrals worked to everyone's advantage and Mr. Krout's staff was extremely cooperative and generous with their time. We had many, many meetings with staff and with my consultants, and we have come to an accommodation on all of this."

**MICHAELIS** "Are there any questions of the applicant? Okay. Is there anyone else in the audience wishing to speak in favor of this item? In opposition to? Seeing none, I will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning,

uses and character of the neighborhood: Commercial uses on property zoned "LC" Limited Commercial are located to the north and east of Parcel 13. Office uses are located on the "GO" General Office tracts to the south. The properties to the west are zoned "MF-18" and developed with a variety of residential uses, including single-family, duplex, townhouses, and apartments. The suitability of the subject property for the uses to which it has been restricted: The site is already in use as the Sundance Apartments and could continue to be used in this manner. Extent to which removal of the restrictions will detrimentally affect nearby property: The conversion of the property from apartments to commercial uses would generate more traffic but does not seem to deteriorate the level of service on North Rock Road. If left-turn movements in and out of Parcel 13 to Rock Road are allowed, it does not significantly impact the planned transportation improvements along at Rock Road. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial use is not in conformance with the Comprehensive Plan, although the properties to the north and east are shown for commercial use. Impact of the proposed development on community facilities: The conversion from apartments to commercial use will add traffic to Rock Road and 21<sup>st</sup> Street North. That the request be approved, subject to the following:

- A. APPROVE the zone change (ZON2001-00008) to "LC" Limited Commercial subject to replatting.
- B. APPROVE the Community Unit Plan Amendment #7 (DP-62), subject to the following conditions:
  1. The applicant shall guarantee the following improvements on Rock Road:
    - a) Access on North Rock Road shall be limited to one point of access directly across from the opening between Lots 5 and 6 on Bradley Fair Addition.
    - b) The existing opening into the proposed Parcel 13 (existing Parcel 8) shall be closed.
    - c) In order to allow the northbound left-turn entrance into Parcel 13, a storage lane of 150 feet plus the taper shall be provided.
    - d) Standard accel/decel lanes shall be provided to the opening.
    - e) As per the existing City of Wichita regulations, a medial closure can be done at any point in time if traffic conditions so warrant.
  2. The applicant shall guarantee the following improvements on Rockhill:
    - a) In the event the developer desires an opening closer to the intersection than 250 feet, a continuous decel lane from Rock Road to the first opening, with a taper on the west side of the opening shall be provided.
    - b) A raised median on Rockhill Road extending from Rock Road shall provided to restrict left turns across from any opening within 250 feet of the intersection.
    - c) A storage lane of 150 feet plus taper on Rockhill shall be provided for eastbound left turns.
  3. Additional right-of-way shall be dedicated along Rockhill to allow additional lane/medials and to match with lanes opposite the intersection on Bradley Fair Parkway.
  4. The applicant shall guarantee to upgrade the traffic signal and related improvements at Rock and Bradley Fair/Rockhill.
  5. No apartment units shall be constructed on the northern seven acres of Parcel 8 unless the request is filed and approved for such amendment to the C.U.P.
  6. General Provision #1 shall be revised to reflect conversion of Parcel 13 from a residential to a commercial parcel.
  7. General Provision #7A shall be revised to require a six (6) to eight (8) foot solid or semi-solid wall constructed of stone, masonry, architectural tile or other similar material (excluding wood or woven wire) on the west property line of Parcel 13.
  8. General Provision #7E shall be added to require that landscaping on Parcel 13 be provided per the Landscape Ordinance.
  9. General Provision #8 shall be revised to add Parcel 13.
  10. General Provision #10 shall be revised to add: For Parcel 13, all freestanding signs on Rock Road and Rockhill shall be monument type with a maximum height of 20 feet, and shall be spaced a minimum of

150 feet apart regardless of leasing or ownership of the parcel. No sign shall exceed 150 feet in size. No flashing or moving signs shall be permitted. No portable or off-site signs shall be permitted.

- 11. Add a general provision to state that trash receptacles and roof-top equipment shall be screened to reasonably hide them from ground level view, with screening being constructed of materials and/or landscaping compatible with and complementary to the exterior of the buildings to which they provide service. Loading docks and service areas shall also be screened from Rock Road, Rockhill and the residential areas to the west with screening walls and/or landscaping approved by the Planning Director.
- 12. Add a general provision to state that a plan for a pedestrian walk system shall be a requirement of the C.U.P. The walk system shall link proposed buildings with the sidewalks along Rock Road and Rockhill.
- 13. Add a general provision to state that all buildings in Parcel 13 shall have similar materials, color, and texture. Metal shall not be used as a predominate exterior building material on any facade.
- 14. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
- 15. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
- 16. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
- 17. The applicant shall submit 4 revised copies of the C.U.P. 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.

**MCKAY** moved, **WARNER** seconded the motion, and it carried unanimously (14-0).

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Warner left the meeting at 2:50 p.m.

McKay left the meeting at 2:50 p.m.

- 8. **Case No. CON2001-00020** – Fierro’s Tire Repair requests a Conditional Use to allow used car sales on property described as:

Lot 8, Block 4, except the West 10 feet for street, Goldens Gardens, together with the North Half of vacated 10th Street on the South, except for the West 10 feet for street, Sedgwick County, Kansas. Generally located on the southeast corner of Zoo Boulevard and West Street. Lot 8, Block 4, Golden Garden Addition.

**BILL LONGNECKER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant, Fierro’s Tire Repair, is requesting consideration and recommendation for a Conditional Use to allow used car sales on property zoned “LC” Limited Commercial. The property (approximately 16,000 square feet) is described as Lots 8, Block 4, Golden Garden Addition, located on the southeast corner of the Zoo Boulevard and West Street intersection. Zoo Boulevard fronts the east side of the property and West Street fronts its west side. The Unified Zoning Code requires a Conditional Use for vehicle and equipment sales, outside in “LC” Limited Commercial zoning.

The applicant is requesting consideration of used car sales on this property, which contains an active tire, brakes and muffler repair shop. The applicant proposes to continue the current business and add car and truck sales to it. The site has 3 existing entrances/exits; 2 on Zoo Boulevard and 1 on West Street. The site has an existing building for the current business, of approximately 1,512 sq.-ft. There are 2 canopies (792 sq.-ft each and 10 ½ ft tall) on the site, 1 on the West Street side and another on the Zoo Boulevard side. The applicant proposes to provide 10 marked spaces for the vehicles sales. The applicant proposes to provide 7 spaces for customer parking. There is grass (1,566 sq.-ft) along the north side.

The neighborhood to the north (across Zoo Boulevard) is zoned "TF-3" Duplex and has developed residential. The neighborhood to the southeast is zoned "SF-6" Single-family residential and is developed single family residential. "LC" Limited Commercial zoning and development is adjacent to it on the south, with strip shopping centers and free standing businesses. "B" Multifamily zoning and "GO" General Office zoning, (across West Street) is on the west side, the development is predominately "GO" in nature.

Staff drove approximately one mile from the West Street and Zoo Boulevard intersection and found two car sales lots:

- (a) Advantage Edge, at 400 N West Street. This business has been open approximately 60 days. Prior to this current car sales business at 400 N West Street, the Wichita Board of Zoning Adjustments approved an exception to permit used car sales (BZA 22-90) at 400 N West Street, on 12-18-90, with specific conditions for development, to Carco Unlimited.
- (b) Another car sales lot is located at located 8<sup>th</sup> & Murdock on West Street, CON-521. This case was approved by the MAPC on 5-13-99 and returned to the MAPC by the WCC for reconsideration on 6-8-99. The MAPC reconsidered and, again, approved the request on 7-29-99. The WCC denied the request on 8-24-99. On 2-9-00 the District Court of the 8<sup>th</sup> Judicial District approved the conditional use for a car sales lot at this location.

Besides these existing car sales lots on N West Street (BZA 22-90 & CU 521), there have been two other requests for car sales within approximately a mile of the applicant's site:

- (a) CU 524, located on the northwest corner of Murdock and N West Streets, was approved by the MAPC on 6-24-99 and denied by the WCC on 7-20-99.
- (b) Con2000-00022, located north of 13<sup>th</sup> Street N and west of Meridian, was denied by the MAPC on 7-13-00. The WCC returned the request to the MAPC for reconsideration on 8-8-00. The MAPC made again denied the request on 8-8-00 and the applicant decided not to protest the decision.

**CASE HISTORY:** Lot 8, Block 4, Golden Garden Addition was entered into record 12-18-29. 10<sup>th</sup> Street was approved for vacation by the MAPC 07-11-85.

**ADJACENT ZONING AND LAND USE:**

NORTH: "TF-3" Duplex	Residential
EAST: "SF-6" Single-family residential	Residential
SOUTH: "LC" Limited Commercial	Strip shopping centers Free standing business
WEST: "B" Multifamily & "GO" General Office zoning	Residential and office

**PUBLIC SERVICES:** Zoo Boulevard and West Street are four-lane arterial streets. The estimated traffic volume of (ADT) trips per day at the Zoo Boulevard - West Street intersection is 8255 ADTs on the west side, 15820 ADTs on the north side, 17060 ADTs on the east side and 16735 ADTs on the south side. Water/sewer and other municipal services are provided to the site.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita Land Use Guide of the 1999 update to the Wichita – Sedgwick County Comprehensive Plan identifies this property as Commercial. The current zoning of the site is "LC" Limited Commercial. The Unified Zoning Code requires a Conditional Use for vehicle and equipment sales, outside in "LC" Limited Commercial zoning. The Wichita – Sedgwick County Comprehensive Plan, Section 3, directs the location of auto related uses to appropriate areas: such as the CBD fringe, segments of Kellogg, established areas of similar development and areas where traffic patterns, surrounding land uses and utilities can support such development. In addition, Zoo Boulevard (connecting to West Central and McLean Blvd) is called out by the WSC Comprehensive Plan as part of the system of Recreational Corridors and by the Visual Form Map. These designations recognize Zoo Blvd as a road that is critical in forming overall community perceptions and deserving attention

**RECOMMENDATION:** Based on the information available prior to the public hearing, MAPD staff recommends the application be DENIED. The Comprehensive Plan does not indicate that a used car lot would be appropriate for this area. The commercial uses along this portion of Zoo Boulevard and West Street serve the neighborhood and the West side of the City. They do not involve the outdoor display and/or storage associated with vehicle sales.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Surrounding property is zoned "TF-3", "SF-6", "LC", "B", and "GO". The character of the neighborhood is a mix of residential, office and retail. The existing businesses

- in the neighborhood are local retail and citywide retail in character. None of the existing businesses are permitted to have outside display and storage on the level required by a car lot. A used car sales business would be out of character with these businesses
2. The suitability of the subject property for the uses to which it has been restricted: The application area is zoned "LC," Limited Commercial. The "LC" district does not permit auto sales without a Conditional Use permit. The current business of tire sales/repair, brake repair and muffler repair is a permitted use in this zoning and consistent with the existing businesses in the area.
  3. Extent to which removal of the restrictions will detrimentally affect nearby property. Outdoor storage and display of vehicles is not consistent with the type of development existing at this intersection. Approval of this request will most likely open other sites nearby for additional vehicle sales lots and other "heavier" commercial uses. This site has been a gas station and a number of auto related repair businesses.
  4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Unified Zoning Code requires a Conditional Use for vehicle and equipment sales, outside in "LC" Limited Commercial zoning. The Wichita Land Use Guide of the 1999 update to the Wichita – Sedgwick County Comprehensive Plan identifies this property as Commercial. The current zoning of the site is "LC" Limited Commercial. The Wichita Sedgwick County Comprehensive Plan, Section 3, directs the location of auto related uses to appropriate areas: such as the CBD fringe, segments of Kellogg, established areas of similar development and areas where traffic patterns, surrounding land uses and utilities can support such development. The proposed car sales lot does meet these criteria. As previously mentioned Zoo Boulevard is called out as a Recreational Corridor and on the Visual Form Map as a critical element in the forming of perceptions about the community, a car sales lot does not lend itself to these criteria.
  5. Impact of the proposed development on community facilities: Municipal services are available to serve this site. A car lot is typically a heavy generator of traffic. The current business, on a Saturday, would generate 6 autos per 1,000 sq.-ft. An auto sales generates 37.5 autos per 1,000 sq-ft; a substantial increase on this site on a Saturday.

If, however, the Planning Commission believes this is an appropriate use, staff recommends approval be subject to the following conditions:

1. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of used cars. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
2. The applicant shall submit a revised site plan giving dimension control of display areas, vehicle circulation, solid screening, ingress and egress, parking areas, queuing areas, dumpsters, landscaping, signs, lighting and showing all easements and set backs for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards
3. The applicant shall submit landscaping plan for review and approval by the Planning Director
4. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles so not encroach onto public right-of-way.
5. 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.
6. There shall be no use of elevated platforms for the display of vehicles.
7. No amplification system shall be permitted.
8. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
9. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted.
10. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

**LONGNECKER** "This is a Conditional Use request to allow car sales on Limited Commercial zoning. This property is located on the southeast corner of Zoo Boulevard and North West Street. The zoning around the southeast

property is 'TF-3' Duplex zoning. There is Limited Commercial, General Office and 'B' Multi-family over on the west side. The applicant is requesting consideration for this Conditional Use to allow car sales in addition to the business that is now located there, which is a tire, brake, and muffler repair shop. The applicant proposes to continue the current business and add the car and truck sales to it.

The site has three existing entrances; two on Zoo Boulevard and one on West Street. Both of those are shown on the site plan that the applicant has provided us. He also shows the existing structure, which is approximately a 1500 square foot building and two canopies, 10 foot high, 792 square foot on either side of the existing structure.

As the site plan shows, the applicant proposes, at this time, to provide spaces for 10 lots for vehicle sales. Currently, there are 7 spaces provided for customer parking. Now, with the combination of the muffler and tire repair and a car sales, the parking will have to be adjusted. I believe it will have to go up. One of the significant features of this intersection is the status of Zoo Boulevard, which the applicant's side is part of. The Comprehensive Land Use Plan calls this section of Zoo Boulevard out as a recreational corridor and also it is shown on the visual form map, which is what we are looking at here, as a critical element in the forming of perceptions about the community. Those areas are called out again in the Comprehensive Plan as critical areas in the fact that they form perceptions about the community for people going through it. Also, they are proposed as links with trails and recreational areas of the city.

At one point, this site was actually surrounded by three roads on all sides, isolated from the rest of the properties. Tenth Street was vacated. Staff is recommending denial of this application. We are basing this on the recommendations on Page 4; Zoning uses and character of the neighborhood. Surrounding property is zoned 'TF-3'; 'SF-6' Single-family; Limited Commercial; 'B' Multi-Family and General Office. The character of the neighborhood is a mix of residential office and retail; existing businesses in the neighborhood are local retail or a citywide retail in character. None of the existing businesses are permitted to have outside display and storage on the level required by a car lot. Also, the suitability of the subject property for the uses to which it has restricted.

The Limited Commercial district does not permit auto sales without a Conditional Use. The current business of tire sales, brake repair and muffler repair is a permitted use in this zoning because it is consistent with the existing businesses in the area. We do have businesses in the area that provide services to autos either in parts or repair. The outdoor storage and display of vehicles is not consistent with the type of development existing at this intersection. The approval of this request will most likely open other sites nearby for additional vehicle sales lots and other heavier commercial uses.

No. 4 is a rehash of what I mentioned earlier in that we are talking about Zoo Boulevard as being called out as a recreational corridor and visual form map as a critical element in forming perceptions about the community. A car sales lot does not lend itself to these criteria. Also, going to the Comprehensive Plan, Section III directs location of auto related uses to appropriate areas such as the CBD fringe; segments of Kellogg, established areas of similar development in areas where traffic patterns surrounding land uses and utilities can support such development.

Item 5 on Page 4 'the impact of proposed development on community facilities. There are municipal services available on this site. A car lot is typically a heavy generator of heavy traffic; heavier than the use that is now there. Looking at the blue book and looking at the type of traffic that is generated with businesses similar to this, the current business typically on a Saturday would generate 6 autos per 1,000 square foot of building space. An auto sales lot would generate 37.5 auto per 1,000 square foot. So, based on this, staff sees an increase in the traffic at this intersection.

One other area that we looked at—we drove approximately one-mile area from this intersection, and we looked for other car lots within this area. There were two other car lots within the area. If you will look on Page 2 of the staff report, you have, mentioned at the bottom of the page, Advantage Edge Auto, which is located at 400 North West Street. This was approved by the BZA, Case No. 22-90 on December 18, 1990 with specific conditions for development for the applicant at that time, as CarCo Limited. This is approximately  $\frac{3}{4}$  of a mile from this site.

There is also a more recent case for a car lot that is located between 8<sup>th</sup> Street and Murdock on West Street. This is Conditional Use Case No. 521. This has an interesting history to it. The case was approved by the MAPC; the City Council returned it to the MAPC for consideration; the MAPC reconsidered and again approved the request. The City Council subsequently denied the request. At that point, the applicant took the case to Judicial District Court No. 18 and they approved the Conditional Use for car sales at this location.

Besides these two existing car lots in the area, there were two other cases that were considered that were within this mile area that staff looked at. One was Conditional Use 524, which is located on the northwest corner of Murdock and north West Street, which is very close—it is only a couple of lots away—to Conditional Use 521. This was approved by the MAPC in June of 1999. It was denied by the City Council in July 1999.

Then the last case was Conditional Use 2000-22, which was located on 13<sup>th</sup> Street North and west of Meridian. This was denied by the Planning Commission in July of 2000. The City Council returned the request to the

Planning Commission for reconsideration. The Planning Commission again denied the request and the applicant decided not to protest that decision. The DAB VI heard this case, CON2001-00020, and considered it on April 2. They recommended denial of the Conditional Use. They also asked staff to supplement some of the language in our report.

They pointed out that due to the unusual shape of the lot caused by the intersection that there would be a possibility of reduced vision and increased distraction for drivers at this busy intersection due to the intensity of the proposed use of the corner site, which would be a car lot. Also, there is substantial visibility of the proposed car lot at that intersection would also be a problem as far as traffic and public safety concern. Are there any questions?"

**BARFIELD** "On the slides, could you go back to the site? Right there. Don't those vehicles right there represent outside storage?"

**LONGNECKER** "Those are vehicles that are used for this abutting business which is a cleaning facility. The business here; this fleet of trucks goes out and takes care of commercial businesses like hospitals. It is a cleaning service."

**BARFIELD** "What about the vehicles in the rear there?"

**LONGNECKER** "At the rear? I think those are also used on a daily basis. I am not quite sure what that is (indicating on slide), but that appears to be a trailer, but I don't know how frequently those are used by that business owner."

**BARFIELD** "My second question is 'how far is the closest resident to this site?'"

**LONGNECKER** "Right behind this truck."

**BARFIELD** "And that is on the east side?"

**LONGNECKER** "The southeast side, sir."

**PLATT** "Are there not residences right across the boulevard?"

**LONGNECKER** "Yes, sir, there are."

**BLAKE** "I have a question about the parking adjustment. What did you mean by that?"

**LONGNECKER** "Well, as the applicant has made this request, he would like to continue his current business and add the car sales to it. As it is now, they have adequate parking for the business they have. As a matter of fact, they have an extra lot, but with the car sales, we would have to look at an additional parking to be combined with the retail."

**BLAKE** "Is it included in this?"

**LONGNECKER** "No. That would have to be addressed with a revised site plan if the members of the Planning Commission decide to approve this, which, I might add, if the Planning Commission does decide to approve this, there is a list of conditions that the staff has drawn up on Page 5, Items 1-10. One of those would be a revised site plan which would address the parking."

**HENTZEN** "Bill, would you go back to show the zoning map that has the colors? Okay, that is the existing zoning now? And that mustard color to the right, what zone is that?"

**LONGNECKER** "That is 'TF-3', which is a duplex type of zoning."

**HENTZEN** "Okay. Do I recall correctly that Zoo Boulevard goes next to this property and then there is a railroad before you get to the mustard colored area?"

**LONGNECKER** "That would be correct, sir."

**HENTZEN** "In other words, that residential area is separated by the railroad and Zoo Boulevard?"

**LONGNECKER** "That is correct. I believe that that railroad is mentioned in the Comprehensive Plan as being perhaps being utilized as the trail system."

**PLATT** "Is the railroad active?"

**LONGNECKER** "It is active now, yes, sir."

**MICHAELIS** "Thank you, Mr. Longnecker. Applicant, please."

**JUAN FIERRO** "I live at 735 North Doris here in Wichita. I am just trying to add, like he said, a used car sales on my lot to have a better use for the lot. Right now, we are not having enough income for it, so we thought if we could add something to it, we could have a better income and probably employ a couple more people. That is all I have to say."

**MICHAELIS** "Are there any questions of the applicant? Thank you, sir. Is there anyone else in the audience wishing to speak in favor of or in opposition to this? Seeing none, we will bring it back to the Commission."

**BARFIELD** "I have a question for staff. I heard you mention something about muffler work or muffler repair. I don't see anything here about that."

**LONGNECKER** "Yes, sir. The applicant, when he filled out the application, indicated that the current business did muffler repair, brake repair and also tires."

**BARFIELD** "Okay."

**WARREN** "I went out and looked at this location and I am going to be clear out of character for Commissioner Warren, I think. I was concerned a little bit with just general maintenance and housekeeping out there. The things I saw were ill maintained parking lots, junk tire storage. We had some tire display storage of used tires. Whether it was proper or not, I am not real certain, in terms of Code, but we did have just junk tire storage on site. There was quite a little improper maintenance. I saw painting and things of that nature, which wouldn't be a land-use item at all."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the zoning, uses and character of the neighborhood; the suitability of the subject property for the uses to which it has been restricted; the extent to which removal of the restrictions will detrimentally affect nearby property; conformance of the requested change to the adopted or recognized plans and policies; and impact of the proposed development on community facilities; I move that this application be denied.

**WARREN** moved, **GAROFALO** seconded the motion, and it carried with 10 votes in favor (Warren, Blake, Platt, Michaelis, Hentzen, Osborne-Howes, Coulter, Lopez, Garofalo and Johnson) and 2 in opposition (Barfield and Marnell).

**OSBORNE-HOWES** "I voted for the motion, but I thought that maybe the applicant might want to know some of the reasons this was denied. One of my thoughts was not just because it was Zoo Boulevard, but also that that is a very unique corner, and I think it would cause traffic problems if we had not just outside storage but display and sales. I really think that would be a negative impact on traffic. That's all."

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9. **Case No. CON2001-00022** – Old Mission Cemetery (Owner); Horizon Telecommunications Inc. and Cricket Communications Inc. (Applicants); Ferris Consulting c/o Greg Ferris (Agent) request a Conditional Use for a wireless communication facility on property described as:

That part of the NE ¼ of the SE ¼ of Sec. 3, Twp. 27-S, R-1-E, of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, described as commencing at the S.E. Corner of the NE ¼ of said SE ¼; thence north, along the east line of the NE ¼ of said SE ¼, 334.40 feet; thence west, parallel with the south line of the NE ¼ of said SE ¼, 105 feet for a place of beginning; thence continuing west, along the last described line, 50 feet; thence north, at right angles, 50 feet; thence east, at right angles, 50 feet; thence south, at right angles, 50 feet to the place of beginning. Generally located south of 24<sup>th</sup> Street North and west of Hillside.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 150-foot high monopole tower (see attached elevation rendering) by Horizon Telecommunications, Inc. for use by Cricket Communications, Inc. The proposed site is zoned "SF-6" Single-Family Residential. Wireless Communication

Facilities over 65 feet in height in the "SF-6" Single-Family Residential zoning district may be permitted with a Conditional Use.

The applicant originally applied for a wireless communication facility near 24<sup>th</sup> Street North and Gentry; however, the request (CON2000-00055) was denied by the MAPC on December 21, 2000. The applicant indicates that this alternative site was selected based upon feedback received from citizens at the hearing on the previous request who indicated that they preferred a tower location that was not in the middle of a residential area.

The character of the surrounding area is a mixture of both residential and institutional uses. The nearest properties developed with residential uses are located approximately 180 feet west of the site and are developed with single-family residences on property zoned "SF-6" Single Family Residential. The properties to the north are zoned "SF-6" Single-Family Residential and are developed with single-family residences. The property to the east is zoned "SF-6" Single-Family Residential and is developed with a cemetery. The property to the south is zoned "LC" Limited Commercial and is developed with a church.

The proposed tower would be sited on a 2,500 square foot area located south of 24<sup>th</sup> Street North and west of Hillside inside the maintenance yard for the Old Mission Cemetery. Access to the site is proposed to be via Hillside through the cemetery maintenance yard. The applicant's site plan (attached) depicts a 50-foot by 50-foot compound with the tower located in the center of the compound and the ground-level equipment located in the southern portion of the compound. The compound is shown as being enclosed by a six-foot high chain link fence with barbed wire. The screening fence for the maintenance yard also provides screening for the ground level equipment. The site plan does not show any screening trees; however, the applicant indicated to staff that they are willing to plant trees to provide partial screening for the nearby residential area.

The applicant indicates that the proposed wireless communication facility is part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. The applicant's justification for the request (attached) indicates that this site is necessary for Cricket Communications, Inc. to provide wireless phone coverage along I-135 and K-96 and for the Wichita State University area.

In the surrounding area there are four commercial towers (two northeast of 21<sup>st</sup> and Oliver, one at WSU Police, and one at KMUW), a school district tower at Brooks Middle School, a water tower (at WSU), and two stadiums (WSU football and baseball) with tall light and flag poles. Additionally, there is vacant land further to the north in the K-96 corridor where a tower could be located further away from existing residential development. The applicant's justification for the request (attached) indicates that these alternative locations have been explored and do meet their communications needs.

**CASE HISTORY:** The site is un-platted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-6" Single-family residences  
SOUTH: "LC" Church  
EAST: "SF-6" Cemetery  
WEST: "SF-6" Single-family residences

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to Hillside, a four-lane arterial street.

**CONFORMANCE TO PLANS/POLICIES:** The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

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

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. A landscape plan shall be submitted for approval by the Planning Director that provides 4" caliper shade trees to be planted and maintained every 30 feet along the entire length of the western and northern boundaries of the parent tract.
- F. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- G. Approval of the Conditional Use constitutes a waiver of the Compatibility Height Standard for the wireless communication facility.
- H. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- I. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- J. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- K. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

- L. The zoning, uses and character of the neighborhood: The character of the surrounding area is a mixture of both residential and institutional uses. The nearest properties developed with residential uses are located approximately 180 feet west of the site and are developed with single-family residences on property zoned "SF-6" Single Family Residential. The properties to the north are zoned "SF-6" Single-Family Residential and are developed with single-family residences. The property to the east is zoned "SF-6" Single-Family Residential and is developed with a cemetery. The property to the south is zoned "LC" Limited Commercial and is developed with a church.
- M. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential and is currently used as a maintenance yard for a cemetery. Wireless communication facilities in excess of 65 feet in height in the "SF-6" Single-Family Residential zoning district may be permitted as a Conditional Use.
- N. Extent to which removal of the restrictions will detrimentally affect nearby property: The closest properties that are developed with residential uses are single-family residences located approximately 180 feet to the west. The only impact to be noted at the time this report was prepared is the visual impact of a tower, and the visual impact should be reduced by the landscaping required by the conditions of approval.
- O. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; by being placed in an area where trees obscure some of the facility; and by being screened through landscaping. The proposed wireless communication facility does not comply with the compatibility height standard of the Uniform Zoning Code since it is located less than 150 feet from the nearest lot line of property zoned "TF-3" or more restrictive; however, the applicant owns the adjoining property and it is undeveloped, so there should be no compatibility issues concerning the proposed wireless communication facility.
- P. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed monopole does not detrimentally impact the operation of airports in the vicinity.

**PLATT** "As I have been doing, I will step down on cases involving communication towers. I have a conflict of interest as part-owner and president of the Board of Directors of a building that actually leases space to antennas."

**KNEBEL** "This is a Conditional Use request to permit the construction of a 150-foot high monopole tower on property that is zoned 'SF-6' Single-Family residential. The Unified Zoning Code requires a Conditional Use any time that a wireless communication facility exceeds 65 feet in a single-family district. The location is south of 24<sup>th</sup> Street North and on the west side of Hillside. The site is currently developed with a maintenance yard for the cemetery, which is located to the east of the site across Hillside.

The applicant originally applied for a site to serve this particular area near 24<sup>th</sup> Street and Gentry. The Planning Commission denied that request in December, primarily due to the fact that it was located in the middle of a residential neighborhood and the opposition from the owners of residential properties in that area. The applicant has indicated that this alternative site was selected based on the feedback of that hearing in attempting to locate this is a less residentially developed area. This is a maintenance yard; it is still at least within a residential area, although not right in the heart of one, on the edge of an arterial street. There are residential properties removed from it to the south by commercially zoned but institutionally used, used for a church at this point. You have, to the north, residential properties which are separated by vacant property, which is also zoned for residential. To the east, the residential properties are very far removed and buffered very well by a cemetery. To the southeast you have Wichita State University.

(Indicating) This pole is the type of pole that our consultant said we should put antennas on. It is probably 30 feet tall. For the requested pole, you would have to stand back several hundred feet in order to get it in a picture. (Indicating) This is the residential site that would be most impacted. It is a single-family house. There is a vacant lot just across the fence, so it is not right immediately across that fence; there is roughly 50 feet of vacant land between it. As I mentioned, the site is currently being used as a maintenance yard for the cemetery. The access to the site would be through that maintenance yard. This would be located at the south end of the maintenance yard in the center.

The applicant has indicated that this particular site is needed to provide service along Interstate 135; Interstate 235 and the K-96 Expressway, and probably foremost, the Wichita State University area, which is in this location. (Indicating) This shows the level of service that they currently provide with the antennas located on a tower in this site. Then this shows a proposal to locate 125 foot and they are indicating some problem areas that they had with that, and then the 150-foot area height that they are requesting for the area.

When we discussed the 24<sup>th</sup> and Gentry site, we mentioned several opportunities in this area, including some commercial communication towers, a school district tower, a water tower, a couple of stadiums with tall light poles in the area as well as some vacant land along the K-96 corridor where a tower could be located. Staff believes that the applicant has provided sufficient justification why those do not meet their needs and that justification is attached. It is quite lengthy, so I won't go through it now. I hope everybody has had a chance to read it. If not, I will let the applicant give you anything that he believes needs to be added to that. Staff feels that this conforms with the Wireless Communication Master Plan and is recommending it for approval. The conditions are typical to those that it be erected within a year, that it be a monopole as proposed, at the height of 150 feet with the four carriers that are proposed.

We are recommending something that is a little bit greater than what is typically required, due to the close proximity of residences in these locations and to the north. We are recommending that the entire maintenance yard be buffered. There is a screening fence there, but it should be buffered with trees. That would be a requirement if this site were to be developed today as a maintenance yard under the current Landscape Code. We are requesting that those buffer trees be provided as a long-term solution to providing some screening of at least the base of the tower to those residential properties that will face this site. We are also indicating that this approval would be a waiver of the compatibility height standard for this request.

This particular request was heard by the District Advisory Board, which did recommend it for approval. I don't think you have anything from that board indicating that. Marvin attended that meeting on my behalf. At that meeting, there was an issue raised from Wichita State University regarding a tower that they have at their KMUW site that does send microwave transmission up to the Channel 12 CBS tower. They were a little bit concerned as to whether this tower would impact a site between those two microwave dishes. The applicant has looked at that and will address that for you and they indicate that they don't think that there is a concern there. With that, I will answer any questions."

**BARFIELD** "Two questions. How far did you say the nearest residence was?"

**KNEBEL** "Approximately 180 feet to the west."

**BARFIELD** "And what was the vote by the DAB?"

**KNEBEL** "I believe it was 6-0. Is that right, Marvin?"

**KROUT** "Yes, 6-0 to approve"

**GAROFALO** "I read with interest this letter from Roger Lowe of the University. In the staff report I believe it says that they should be denied access. But when I read the letter, it looks a little different. Is there any effort being made to have the City Council request WSU's participation in these? They indicate here that the City Council may ask them to. Not so much with regard to this case, but for later applicants."

**KROUT** "I am not aware that the City Council has taken that action. The applicant's agent may have some more information along those lines. But as difficult as it was in the past, as you know, trying to get answers and decisions from the local school board, I think that the problem is even more compounded when it comes to the Wichita State University campus. I think the agent can probably respond to that."

**KNEBEL** "Essentially, Wichita State University has made a very similar statement as to what USD 259 did, 'we would consider it if we were asked', and if they did consider it then there is no indication in there that they would allow this particular company to locate it, but that they would seek bids from somebody who wanted to utilize their facilities. I don't know that that is going to provide any type of timely relief for this particular applicant."

**GAROFALO** "That's what I said. Not particularly in relation to this, but looking down the line a little. They have places that some of this stuff can go on without putting up more towers, so maybe that is something that ought to be approached."

**KNEBEL** "My guess is that this particular tower would probably meet the needs for a number of years in this area."

**MICHAELIS** "Are there any further questions of staff? Thank you, Mr. Knebel. The applicant, please."

**GREG FERRIS** "Mr. Chair, members of the Planning Commission, I represent Horizon Telecommunications and Cricket Communications, the applicants on this case. I won't spend a lot of time reviewing the history. I will tell you what we did after the case was denied. The first thing we did, because staff had recommended that was to contact WSU. They were very gracious, but informed me that they had taken a position that they were not interested in doing anything at this time with cellular communication towers or towers of any kind."

I think what Mr. Lowe was saying is very simply that they are not interested; however, if the City and the County really wanted them to, they would consider it, and to date no one has pursued that and obviously my client isn't in a position to try and get anybody to pursue that relationship. We offered to rebuild either light poles at Eck Stadium or at Cessna Stadium and they were not interested. We immediately began to try and find other locations, some that staff had recommended. We could not find anyone interested in leasing us space except the area here that we are reviewing, that would meet our needs. I would be glad to address any specific locations if you have any in mind as to why they would or would not be adequate or what the issues were on those.

We don't have the opportunity a lot of times to stand up here and completely agree with staff, but we would be willing to accept the recommendations exactly as they have outlined them, even the additional landscaping. I have talked directly with the client and they are willing to do the additional landscaping. It probably will help the area over what is there today because there isn't really any landscaping around that maintenance yard.

There is one issue that I think you should be aware of and that is the discussions we have had with WSU. It is a whole different situation. That is their radio facility. Our engineers have been talking back and forth for the last several days. It does not appear that there are any issues; however, we are willing to add one more condition to the conditions if you would so approve those today. That would be that our engineer would do a study on the line of site analysis on the heights, etc., and that would be provided to staff. I also have WSU's address and we will provide that to them as well. So we are willing to do that. We have evaluated it; we believe that we are well outside of any area that would create any issues. We have done that study and we are willing to put that in writing and document that study and provide it to WSU. They can speak for themselves, but I think that that resolves any of those issues.

We believe this is a good location and we believe it will be very suitable. Probably the best news you will have to hear is that this is the last Cricket Communication Tower that is on the horizon, at least for this phase. So, you won't have to listen to me talk about towers except in the next item you have, for at least a few weeks. I would be glad to answer any questions."

**BARFIELD** "I just have one quick question. Mr. Ferris, the last time when we heard the one at 24<sup>th</sup> and Gentry, I made mention of property that was owned by the City west of Hillside, north of 25<sup>th</sup>. Did you inquire about that property?"

**FERRIS** "We didn't inquire about that because we ran that through the RF analysis, and that site did not service WSU to the level that this does. So after evaluating that site, we determined that that would not meet the criteria

that Cricket Communication has for its towers. But we did evaluate the site and several others up and down Hillside."

**WARREN** "Mr. Ferris, on Item E, having to do with that landscaping on the western and northern boundaries, what did you say on that?"

**FERRIS** "I thought it was a little bit extensive; however, my client has agreed to do that, so I will represent my client and say that this is all right. I think it will be a nice addition to the neighborhood. If the client doesn't have any problem with it, I certainly don't have any problem with it, so we are willing to accept it as it is."

**WARREN** "I did a visual inspection of that lot, I think that aesthetically it is a catastrophic disaster. I am not sure what you are going to do to change that, in fact. But if they are agreeing to do it, I won't say anything more."

**MICHAELIS** "Are there any further questions? Thank you, Mr. Ferris. Is there anyone else in the audience wishing to speak in favor of or in opposition to this item?"

**MARK MCCAIN** "I am not sure which. Members of the Commission, thanks for the opportunity. I am the General Manager at KMWU at Wichita State. In talking with the engineering staff, at least our engineer has spoken with theirs, and we think, at this point, anyway, that there won't be any problem with the line of site issues, or probably even the electronic transmission issues with the different frequencies involved in the work that we do. But we appreciated their effort to get an engineering study available and have it as part of the report.

I would also encourage that if reality shows later on that there is a problem, that they would be willing to resolve any issues that might come about later on. I believe that is all we have."

**MICHAELIS** "I would say you are kind of in favor of the item. Anyone else speaking in favor of this? Anyone in opposition to? Please come forward."

**CLAUDETTE HARRISON** "I live at 2443 Derrick. My property is the one that is directly west of the proposed site. We have resided there for approximately 35 years, and through the years, the present property owners have shown no concern at all about the maintenance of that property. On numerous occasions, we have had to call. We were responsible, I think, for them putting up the fence because we were complaining about all of the excess dirt that was being piled over, directly across the street from my front porch.

The fence at the present time has deteriorated. It is dilapidated. My major concern is that there is no further visual blights in the area. I would like to be reassured with the trees. As a matter of fact, I have a neighbor, who has, on more than one occasion, actually mowed outside the fence on the property owner's property. The fence that is bordering the property on the west side is actually about 10 feet, I think, from the curb. I know someone said there was a lot between there, but there is not a full lot between that fence and that property and the curb.

As I said, I am just concerned about any further blight or dilapidation or deterioration of the property. I am not happy with the status now, and I am just concerned that I would be even less happy with any additional towers."

**MICHAELIS** "Are there any questions of Ms. Harrison?"

**BARFIELD** "Just one quick question. Were you aware of this proposal when the DAB met?"

**HARRISON** "Mr. Burton came through the neighborhood on Tuesday afternoon, I believe, and distributed the notice of public hearing. That was my first indication of it."

**MICHAELIS** "Thank you, Ms. Harrison. Is there anyone else in the audience wishing to speak in opposition to this? Seeing none, Mr. Ferris, you have 2 minutes for rebuttal."

**FERRIS** "Thank you, Mr. Chair. The additional lot is not along the street, it is actually between the house and the fence that the applicant owns. She is correct that the fence is near the street, but the fence actually comes straight across and there is another lot that the applicant owns that buffers it from the houses immediately to the west. I think you can see that on your site plan. (Indicating) It is this lot right here, and that is owned by the applicant.

As far as creating any additional blight, obviously with the trees, I think that is what staff's idea was, was to try and help and improve that area. There is nothing we will be doing in the construction of the tower or the compound within that that will add any blight to this area, and in fact will be helping them move some of that dirt out of there, so that might actually improve some of the visual that they have now. We would be glad to answer any questions that you might have as a follow-up."

**JOHNSON** "Marvin, this is probably a question for you, but is there any way to make sure that this landscape is taken care of, or is it just to get it built and then if it dies, it is dead."

**KROUT** "Well, any landscape plan that is a part of an approval by the Planning Commission or is required by the Landscape Code is enforced, like all City Ordinances are. It does mean that they are generally enforced only by complaint, because we don't have a systematic way of checking. But certainly nearby property owners and others who have an interest in that area can monitor that and report to OCI if they see any problem."

**OSBORNE-HOWES** "That was almost my question. But who is required to maintain it then?"

**KROUT** "Ultimately the property owner."

**FERRIS** "And our lease requires us to maintain it."

**BARFIELD** "Okay, we are talking about the landscaping on the northern side and the western side. May I ask why not the southern side?"

**FERRIS** "On the southern side there really isn't any space between. On the western side you have the separation by the easement from the road. I don't believe that the church has any issues with this tower. I have visited extensively with the church because we actually had attempted to put it on their property as well. I don't believe they are requiring any landscaping, nor do they really want any because then it infringes on their usable space."

**OSBORNE-HOWES** "My last question is that the man from KMUW asked if there was an issue about the line of site. How would that be resolved?"

**FERRIS** "Well, the line of site issue I think is pretty simple. Those are issues where you draw lines and you figure out. Microwave technology is different than radio technology. With radio technology, you can do studies and calculate and determine that there aren't any issues and then come back and have issues. With a line of site, we don't believe that there will be any of that and we will provide that and we will do that analysis.

If it was close, we would be concerned, but we are not close. I think on the radio frequency issues, and Jeff, you can correct me if I am wrong, I believe that that is governed by the FCC and we aren't allowed to interfere. So if there are, those will be taken care of pretty quickly. They can pick up the phone and call the FCC immediately. So, the line of site I think we can do with a study and see. It is kind of like drawing lines on a piece of paper. You can determine what those are. We are going to provide them a copy and staff, but as far as the frequency issues, those issues are pretty heavily regulated. Yes, we would have to. We can volunteer that if you want because we will have to by federal law."

**OSBORNE-HOWES** "I just wanted that in the record."

**GAROFALO** "You are suggesting that that study be included as a condition?"

**FERRIS** "Yes. I have no problem with that. You are more than welcome to add that as a condition, Mr. Garofalo. That will not be a frequency study, however, that will be a line of site study. The frequency study is done in a little different way. That is really submitted to the FCC. I don't think anyone here necessarily would have the expertise. I think any of the staff can evaluate the line of site technology and look at that and evaluate that. The radio frequency issue is one that really is reserved for the FCC to regulate, and they will regulate that, you can rest assured. There will be no issues there."

**MICHAELIS** "Are there any further questions? Thank you, Mr. Ferris. We will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is a mixture of both residential and institutional uses. The nearest properties developed with residential uses are located approximately 180 feet west of the site and are developed with single-family residences on property zoned "SF-6" Single Family Residential. The properties to the north are zoned "SF-6" Single-Family Residential and are developed with single-family residences. The property to the east is zoned "SF-6" Single-Family Residential and is developed with a cemetery. The property to the south is zoned "LC" Limited Commercial and is developed with a church. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential and is currently used a maintenance yard for a cemetery. Wireless communication facilities in excess of 65 feet in height in the "SF-6" Single-Family Residential zoning district may be permitted as a

Conditional Use. Extent to which removal of the restrictions will detrimentally affect nearby property: The closest properties that are developed with residential uses are single-family residences located approximately 180 feet to the west. The only impact to be noted at the time this report was prepared is the visual impact of a tower, and the visual impact should be reduced by the landscaping required by the conditions of approval. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; by being placed in an area where trees obscure some of the facility; and by being screened through landscaping. The proposed wireless communication facility does not comply with the compatibility height standard of the Uniform Zoning Code since it is located less than 150 feet from the nearest lot line of property zoned "TF-3" or more restrictive; however, the applicant owns the adjoining property and it is undeveloped, so there should be no compatibility issues concerning the proposed wireless communication facility. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed monopole does not detrimentally impact the operation of airports in the vicinity.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. A landscape plan shall be submitted for approval by the Planning Director that provides 4" caliper shade trees to be planted and maintained every 30 feet along the entire length of the western and northern boundaries of the parent tract.
- F. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- G. Approval of the Conditional Use constitutes a waiver of the Compatibility Height Standard for the wireless communication facility.
- H. Prior to the issuance of a building permit, the applicant shall provide to the MAPD, Office of Central Inspection, and Wichita State University an engineering analysis indicating that the monopole does not interfere with KMWU microwave communications in terms of line of sight and height.
- I. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- J. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- K. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- L. Any violation of the conditions of approval shall render the Conditional Use null and void.

**JOHNSON** moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (11-0-1) Platt abstained.

**WARREN** "Mr. Chair, as an add-on to that, I was so surprised when I went out and looked at this. It is zoned 'SF-6', so I assume that it is some kind of a legal non-conforming use that we have out there?"

**KROUT** "Probably. I don't know how old that cemetery is. This is a maintenance yard for the cemetery. Cemeteries are permitted in 'SF-6'.

**KNEBEL** "They require a Conditional Use."

**WARREN** "This is separate from the cemetery. I guess my point is this. I think it almost behooves us to alert the Code people. We have storage out there. You pile dirt two stories high and you have a storage problem."

**KROUT** "Yeah. I think it may be a non-conforming use. And speaking of enforcement problems and storage, I think that that use that you saw south of Zoo Boulevard, which is a cleaning service with trucks in and out and equipment and that sort of thing, it is not a retail or office business and probably is not permitted in the 'LC' zoning either."

**WARREN** "I sympathize with the lady that talked about it. I think that whole lot is subject to some review by Code Enforcement to see what could be done to clean that up."

**KROUT** "We will pass that information on."

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**10. Visually/Environmentally Sensitive Locations for Placement of Wireless Communication Facilities.**

**SCOTT KNEBEL**, Planning staff "This has been presented to the Planning Commission, and the plan indicates that that map needs to be approved by the Planning Commission prior to its utilization in the siting of wireless facilities. The plan further states that these visually and environmentally sensitive locations are to be officially designated historic landmarks; the Arkansas River corridor; areas designated as architecturally significant by federal, state or local entities, or other areas of civic importance.

The map that you have been presented with and is on the screen here represents the Planning staff's opinion of those particular sites as shown in blue. There is a red line around it, which represents a 500-foot radius, which we extrapolated from the radius that is used for Historic Preservation environs if a site is within 500 feet of a designated Historic landmark, then it requires a review of that site and its impact on that. So we use that same 500 feet for the other civic importance and architecturally significant and Arkansas River corridor sites.

I will go through the sites briefly. Each one is numbered. There is at least one error that we know of on the corresponding numbers and the legend on the right hand side. No. 102 is on the map twice and there is no No. 98 on the map for the Pracht Wetlands. If you look at the Pracht Wetlands up in the northwest portion of Wichita, it is shown as Item No. 102 on the map, but No. 98 on the legend. We will correct that and go over this with a fine-toothed comb, and if we find anything else that might be inaccurate. We have made several revisions to this and there may be other errors like that.

I will go through briefly the first 74 items on the legend, which are scattered around the map, but primarily in the heart of Wichita. They are the small sites, mostly located in here, although there are some others in other locations. Those are the officially designated historic landmarks. Site Nos. 99 through 103 are, again, in those same general areas, and those are the officially designated historic districts, which are a little bit different from the specific landmarks, which are typically just one property.

Nos. 75 and 76 are the Arkansas River corridors, which we have shown here and here (indicating)."

**GAROFALO** "Scott, could I interrupt you just for a second. Since we are on the corridor of the Arkansas River, could you tell me how it was decided where to start and where to end that?"

**KNEBEL** "Primarily based on adjacent land use. The adjacent uses on north of I-235 are primarily industrial and shown to be industrial on the future Land Use Guide in the location south of the landfill, and then again on down south here, while it is not as industrial, there are industrial uses down there and also quite a bit of open sand pit areas, etc., without any real opportunities for any visual corridors along the river in those locations and no real residential development that is located along the river in those areas."

**GAROFALO** "I will disagree with you on some on the south end there."

**KNEBEL** "Okay."

**GAROFALO** "There are really some nice areas to the south there."

**KNEBEL** "Down in the Hydraulic area here (indicating)?"

**GAROFALO** "Even before that. I am talking about for example, along Washington where the bike path goes all the way down to Galena. That is all residential there. It is nicely wooded. We had Eagles down there this year."

**KNEBEL** "Well, staff is not opposed to extending the river corridor in those locations."

**GAROFALO** "In fact, I would think that it could be extended farther south and probably farther north, too. But if the red line would be 500 feet from the bank?"

**KNEBEL** "Yes. Right. From the right-of-way of the private property that fronts the river. It would stop there at that point."

**GAROFALO** "I would urge, no matter what, extending the corridor thing to the south and somewhat to the north, too."

**KNEBEL** "Okay. Moving on, there are several neighborhoods shown on the plan, the Delano, and Riverside, the College Hill areas, which, in the opinion of staff contain quite a number of architecturally significant structures and are shown, based on the architecturally significant criteria. We have large regional parks—the Zoo and Sedgwick County Parks, the Lake Afton Park, Pawnee Prairie, the Chisholm Park up here, the Pracht Wetlands that staff is recommending inclusion of because of their civic importance, and then a number of the major community attractions, such as the Zoo itself, the museums located downtown, which are also of major civic importance."

The Planning staff recommends that you receive public comment. I know there are at least a couple of people here to speak on this. After hearing their comments, that the map be adopted."

**KROUT** "I just want to add a couple of things briefly. One, it isn't the intention of this map just to clarify that we are looking for shorter towers, necessarily, in any of these areas. We are just saying that these are the areas that deserve a little bit closer look. The Code says that we may request an analysis of shorter towers. It also says that we may request photo simulations that would indicate more exactly than we can by trying to drive by the site and imagine what a tower would look like. It would give us a better idea about what the actual visual impact of those towers would be."

The other thing is that we debated before coming to you, whether or not to send this out for additional input. If the Planning Commission gets input or that you feel yourselves that maybe we ought to be extending your input in some way, then I suggest that you may want to send this to the District Advisory Boards for their comments before adopting it."

**WARREN** "Marvin, some time coming up in the fairly near future, I think we are mandated to go into the entire Wireless Communication Tower Ordinance and review it..."

**KROUT** "Next August or September."

**WARREN** "I would wonder if maybe we would want to take this up at that time. The problem I have, when we talk about wireless communication towers is that we throw it all into one perception. I break it out. I say we've got the old, big lattice towers with guy wires; we have the old, big lattice towers like you see out here at KG&E that are self-supporting. Those can be offensive, especially in a neighborhood. They probably shouldn't be allowed. Then we have a lesser lattice tower that stands self-supporting, but it only takes up a very small footprint."

Then we've got the monopole tower. I don't find that offensive at all. I find it almost compatible with a telephone pole, a streetlight and some of the other things that we do without question. So, just to put wireless towers in a package, I think is wrong. I think we need to identify first between the offensiveness of those types of towers and then talk about where they will go. I would like to see us hold this whole project up until we make a review of that Wireless Communication Ordinance that we are going to do in the late summer, it sounds like."

**OSBORNE-HOWES** "I was wondering somewhat the way Mr. Warren was, and then I re-read this, and it looked like what staff is saying is that they have made that distinction and that in these areas they may request an analysis that would put the shorter towers in this area as opposed to the large monopole. Is that kind of what this is all about? I thought this whole idea was to make a distinction."

**KNEBEL** "That is accurate. If I might add, the plan today does have a set of design guidelines, and those guidelines do specifically state that the monopole tower is the favored type of tower over and above any of the other types. I think that is clearly stated in the plan. As Marvin mentioned, this is not a map that says you can't put a wireless facility in these locations, it is simply a map that says that these are the locations that are a little bit more sensitive and need a little bit more scrutiny as to whether or not a very tall wireless facility should be located in these areas, or perhaps a shorter facility in conjunction with other facilities in other locations would be better suited to preserve the visual integrity of these very important features in our community."

**MICHAELIS** "I guess the question I would ask in relation to that is that we have heard, on numerous occasions that short towers won't work, and even putting multiple short towers in won't work. I am wondering what staff's

position would be as a whole, and whether this is something that would come up and say 'okay, this falls within this thing, so we recommend denial'."

**KNEBEL** "I disagree that we have heard that they won't work—I think what we have heard that they won't work as well. I think you can accomplish the same thing with multiple shorter towers as you can with one taller tower; it is just significantly more expensive on the applicant's behalf and two to three times the cost. You are basically replicating the same thing. The cost of a pole that is 60 feet is the same, essentially, as the cost of a pole that is 150 feet. There are very minor differences in cost between those two.

But as far as whether staff would recommend, if somebody came in and wanted to put a 180 foot tall tower in the middle of the College Hill neighborhood—sure, we would recommend against something like that and suggest that you would seek a site that had shorter, multiple towers or another location entirely."

**WARREN** "We have a perception, I think, that people are concerned about and are objectionable to the taller tower. What I am finding in talking to people is 'if I have to have a tower, we don't care how tall it is. We can't hardly see the top of it anyway'. The taller tower I don't find to be objectionable in the neighborhood. The tower might be, but whether we go up 150 foot or 100 foot, it doesn't seem to relate to the people I talked to at all."

**MICHAELIS** "I guess it is back to how many people can tell how tall something is when they are standing back away from it anyway."

**KROUT** "It also relates to which people have talked to. As we went through the process over a year and a half, that was the clear response, and it is in the plan that most people who represent neighborhoods if they would even talk to us, said that they would prefer to see more, shorter towers than fewer taller towers."

**WARREN** "And I think in every case of that, Marvin, you are going to find people with a visual concept of this big, lattice tower. I don't think they were thinking in terms of a monopole. I agree with them. We are going to put a great big lattice tower up, and the height of it would have some bearing. Mr. Chair, we worked a lot with Greg Ferris. I would like to call him up."

**MICHAELIS** "We will get there."

**OSBORNE-HOWES** "Just a comment. Mr. Warren and I have also been talking to different people, because I do find that a lot of people, especially those who are active in the Neighborhood Associations do know what these different towers look like. I think they are very clear on their feeling about them.

I don't know if this is the right time, but you had asked for whether we wanted some input from the DABs or what have you. I think that might be a good idea. That's all."

**MICHAELIS** "Mr. Knebel, do you have anything else on this?"

**KNEBEL** "I don't have anything further, no."

**MICHAELIS** "At this time, is there anyone in the audience wishing to speak on this item?"

**GREG FERRIS** "I am not representing any particular carrier on this issue; however, in the last year and a half, I spent a lot of time working with staff and with different carriers and have spoken with some of those regarding these issues and have some comments.

First of all, there are some, what I think of as inherent problems with the map. I am going to address those first and then I want to talk a little bit of philosophy. If I run over, you can throw me out.

I don't live in any of these blue areas (indicating), but I think that it is a little bit—and I am going to tread real lightly here—but I think it is wrong for us to say that one neighborhood is better than another neighborhood and deserves different treatment. Now, I agree with Items 1 through 74, and Items 99 through 103. We all agreed with that when we did the Plan. Those are designated historic properties for districts. Somebody has taken the time to go through a series of public hearings and determined that those are historic. Now, if I want to put a tower within 500 feet of one of those, whether you did this or not, I am going to have a lot of headaches. You have to go through all kinds of hearings, different situations, issues, meet certain criteria. There are just lots of hoops you have to jump through.

So I don't really personally—and some of the other speakers may have a little different take on this—but I don't have any big problem with Items 1 through 74. Those are historic properties, they are designated in the Plan. I agreed with the Plan at the time it was adopted and I don't have a big problem with that. I don't have any problems with Items 75 and 76, which are the Arkansas River corridor because we also agreed that there may be

some significance to that for the city. However, that is about where I diverge from staff on this issue, and let me tell you why I do.

One is the neighborhoods. I don't think you need to point out neighborhoods. We have an ordinance that requires us to go through a Conditional Use permit if we want to go in a neighborhood. Any neighborhood. Not College Hill, not Riverside or not the areas that may be in the outlying area. It doesn't matter. You have certain criteria and guidelines you have to go through. If we are going to be near any of those historic properties or historic districts, we have issues we have to deal with. So those are all taken care of, and I don't believe that it is appropriate for the Planning Commission, or anybody really, to differentiate between two neighborhoods in different parts of town and say that they should be treated differently. If you are here, we are going to say that this area has more historic value than something else; therefore we are going to treat that differently. I don't think that is a good public policy, nor should be start that, nor do I think that we want to have that.

The other thing is some of the large parks. Those are also listed. Now, if you read your Plan, it encourages us to go into parks and here you are saying 'but if you do go into some of these parks, it is going to be more difficult for you; we can require that'. I want to tell you that at last look, every one of these parks on this list is owned by either Sedgwick County or the City of Wichita. If we were to negotiate a lease with either of those entities, they could require anything they wanted from us. My experience in negotiating a lease with the City is that they will check with the Planning Department and other departments to see how they feel about that. So if Marvin's comment at that time was 'at that particular location, which we have identified, we believe that they should do a photosim' they could require us to do that as part of the lease. So you have all kinds of flexibility, based on the fact that they are in a park.

But you are encouraging us to go into parks, and I would hate for us to right, because I will tell you if you do this, you have said parks are off limits, don't go there. You may not think you have said that, but I will tell you, from my experiences that that will be the response when somebody comes into a community and says 'where can we put towers?', and they see these blue areas in a park and say 'I don't want to go there'. I don't think that is the intent of the plan, nor the intent of the governing bodies, nor the intent of the Planning Commission. So, I believe that those are unnecessary, as well.

The other area that I see as a little bit questionable is Lawrence-Dumont Stadium. I don't think any tower I am going to put up is going to be any more ominous than the 130-foot light standards they have over at Lawrence-Dumont. In fact, if staff is going to require me to try and rebuild those light poles, which we would be glad to do if that was available and we were able to do that, so I don't believe, again, that is necessary. It is, again, owned by the City, and you have all of these restriction regulations.

So, in summary, if I might have a couple more minutes, Mr. Chair?"

**MICHAELIS** "Go ahead."

**FERRIS** "I would suggest that you remove Item Nos. 77, 78, 79, 80, 81, 32, 83, 84, 85, 90, 94, 95, 96 and 97 from your list. I don't have any problem with and you can do what you want with Pracht Wetlands. We aren't going to put a tower in wetlands anyway, so you can do as you please there.

In regard to the whole idea of shorter towers. I just want to say a couple of quick comments. Yeah, shorter towers can work. It is not that they can't work—they are much more expensive. But let's think this through for just a minute. It isn't that people are just opposed to towers in general. They are only opposed to towers that are near them. And Mr. Warren, with all due respect, they may be opposed to a 65-foot tower just as much as a 100-foot tower—maybe yes, maybe no. We had a 125-foot tower, which is a relatively short tower in this day and age, that had a lot of opposition, and a 165-foot tower that had no opposition. So it is hard to say, but I guarantee you that if you have three of them you have three opportunities for disagreement, and three opportunities for problems. And when I come in and have to go through those public hearings, the shorter towers only work if you get all three. They don't work if you just get two of those three. So we prefer to not have to go through that process. We will probably avoid areas where we have to go through that process. But there are some areas where you are going to need some towers, and we would prefer that all neighborhoods be treated the same, which means that you have a Zoning Code, we have a Wireless Plan that treats all residential areas the same, and that should be adequate.

And you have a plan that requires us to go through the governing bodies if we want to put something in a park, because that is the law—those are all taken care of. I would be glad to answer any questions."

**MICHAELIS** "I think what I would like to do is to hear the rest of the testimony first and then have questions so that we don't have a lot of repetition. Next speaker."

**KIM EDGINGTON** "Thank you, Mr. Chair and members of the Commission. I am with Austin Miller and today I am also representing Selective Site, which has several carriers' interest in mind here in this market—Voice Stream, Verizon, Nextell and Cingular. I would like to echo many of Mr. Ferris' comments and I would like to thank the

Planning staff for this map. Being a geographer by trade, I always appreciate a nice map. I, like Scott, found several errors, but that is just me.

There were several concerns that we would like to bring up today, the first being that I am a resident of one of those areas represented on this map, and I will freely admit that there are some properties very close to me that are very marginal. If I were a person living out in a very expensive home in east or west Wichita, I think I would be fairly offended as to why, I, living where I do, am given special treatment over someone in a far more affluent neighborhood. I would question the equity of that situation.

There are significant amounts of land included in some of these areas that are neither visually nor environmentally sensitive. I drive by them and through them often. The map is very generalized and we would hope that through further analysis we could narrow down some of these areas to a great deal. There were several parties, in particular some of the ones that I am representing today that were not notified and were not given this information for you. We feel that in fairness that that should be allowed.

I don't have much more to add of any difference than what Mr. Ferris has already covered, but I would ask that we defer this issue for some further review, possibly set up a workshop session with the interested parties. I think we did a very good job going through this Wireless Communication Master Plan about bringing all of the interests to the table, and I think that this is an important enough issue that that should again happen. I would request that you take that into consideration that we make that available to other interested parties."

**MICHAELIS** "Thank you. Is there anyone else to speak?"

**CURTIS HOLLAND** "Thank you. I am an attorney representing both Southwestern Bell Wireless and Sprint PCS. I came down here today from Kansas City. About a year and a half ago, we started working with you all and the Planning staff in regards to these amendments for the telecommunications ordinances that were recently approved. We worked hand in hand with you all and with the task force that was put together in that regard to work with the industry, and I appreciated that. At that time I had expressed some of the concerns with regards to the way the plan was set up, particularly as it regards to this visually environmentally sensitive locations.

Fortunately, we did change some of the things that were early on in terms of the draft of how that would operate. I think, in the end, we agreed to disagree, and ultimately some of these things were passed over our objection. But we can fully appreciate the balance that is trying to be struck here between these carriers trying to come into this market and to provide service and the community's concerns with standards aesthetically, etc. I will tell you that we take great steps in trying to meet the community standards and we are not trying to force bwers down anybody's throats, we are only trying to put them up where we need service. When we determine that there is a need for service, we try to really scope out areas where we aren't causing a problem, because we would like to move through the system as fast as we can, and we don't like to upset all of the neighbors when we go through that process. We are here to provide a service and not to become enemies with what we hope will be our customers.

I did want to tell you that neither of my clients know much about what is going on down here because we just really found out about it fairly recently. It was only with some communication with Greg Ferris that I even knew about it. I tried to pass on some of this information to Southwest Bell Wireless and to Sprint PCS. I did contact Scott Knebel of the Planning Department immediately after I talked with Greg and asked for a map. Scott did provide me with a map, and I also followed up with Scott and asked for some additional copies of maps. My hope was that I could send them on to my clients so that they could take a look at the map and see how they would consider the map and what is being proposed here. Unfortunately, I didn't get those copies yet; it might be the mail system.

When I got down here, I did compare my map to Greg's and noticed that my map is even different than what he had. I don't have the latest version because what is on here that is not on the most current version are all of the airports. In the previous version, I guess all of the airports were on here. I don't know that you saw that map, but that is what is on my map here. I was going to make some comments about that, but since they have been taken off of the map, I won't say much about that.

I did want to echo a lot of the comments that Mr. Ferris said. I agree with most of that, if not all of it, as particularly with regards to those historic areas. We know that those are sensitive areas. There are some extra hoops that we have to go through, particularly in those historic areas. We have to do a Nepa evaluation, the FCC requires that. That is an extra additional reviewing process that we go through anyway with regard to those historically designated areas. But with regards to the other neighborhoods, I think that the comments that have been made really make a lot of sense to me.

I did want to talk just briefly about this taller versus shorter tower and also hiring a third party consultant to possibly suggest that we go to this two or three shorter towers. First of all, there is really not much in terms of the plan, definition wise, what taller versus shorter is. I agree that there are some instances where you can have

maybe two shorter towers that might fix a problem where you could have otherwise fixed it with one taller tower, but we are talking in terms of difference-wise. Maybe a taller tower being a 150-foot tower and two shorter towers being two 100-foot towers. So, really, I think when you get to those heights, you are not talking about great differences, and particularly they are not really noticeable to the average person on the street. So I think if we are going to move in this direction, we ought to have a little bit better criteria about what taller versus shorter is.

Then the next thing I wanted to mention, just briefly is about the third-party analysis. I find it very difficult for somebody other than a person who is intimate with the network, the RF design of a particular company's network, unless they are really an expert in that particular design, and their network and their footprint in that area, and how all of that operates, I really find it difficult for a third party to come in and to give, really, an expert opinion about whether one tower is suitable or two other towers would be suitable. Both from an engineering standpoint, because again, they don't have the expertise with regard to the engineering.

But then too, from a business standpoint, a lot of these sites that are selected are really based on business decisions. Typically, we are going to try to provide the best service that we can and we try to do that with as few facilities as possible, because they are great expenses whenever you build one of these facilities. So whenever it has been determined from a business standpoint that a facility is needed, that is when the guys get turned loose to design and locate and enter into leases, etc.

But the business decision portion of this really is that we have a lot of customers in this area and our other existing facilities are not adequately serving this area and here I am talking about where we have a capacity or an overload on the system and we can't handle all of the calls that people want to make on the system, so we are trying to fill this extra capacity to provide additional capacity so that more people can use the system when they want to. It is very frustrating when you are on the phone to lose a signal or to drop a call or to be bumped from a call in an area that is very congested with high caller traffic.

So, from a business standpoint, these people are evaluating when it is they want to construct a new facility, given the large expense they are going to have to go through versus providing adequate coverage and a level of service that their customers will like. I, again, don't think that a third party, who is not intimate with the business plan and not intimate with the design can really offer that kind of an analysis. I just fear that if we get into these areas while the staff may or may not want us to go through a two or three tower alternative analysis, my guess is that more than likely we are going to be in that particular kind of situation. It makes it much more burdensome for us, and in the end, I don't know that we get much more out of it than what we started going into it. Those are my comments. I would be happy to answer any questions. Thank you for your time."

**MICHAELIS** "Before we open this up to the Commission, I want to ask Scott a question. Was there any kind of criteria that was used to define, visually and environmentally sensitive?"

**KNEBEL** "Just the criteria that are located in the Wireless Plan. As far as the historic districts--the architecturally significant and civically important properties, and then the Arkansas River corridor—basically..."

**MICHAELIS** "We are pretty one-sided. It looks to me like we have the City and County properties having much more impact than the rest of them. Did we use a set of guidelines that would apply equally to every neighborhood? I feel the same way. I don't feel like my neighborhood should be treated any differently than anybody else's."

**KNEBEL** "As far as the neighborhoods are concerned, the neighborhoods that were selected are those neighborhoods where there has been, in the case of the College Hill neighborhood, there has been a set of design guidelines adopted by this board regarding the historic significance and architectural significance of those properties. We are looking at doing a similar type of project in the Delano neighborhood, and the Riverside neighborhood and Old Town are similar to those neighborhoods."

**KROUT** "Those areas are identified in the adopted Comprehensive Plan as resource areas. That same urban design map that you say earlier when we talked about Zoo Boulevard—the Riverside and College Hill and those other neighborhoods that haven't been designated as historic districts for zoning—are identified as resource areas on the adopted Comprehensive Plan map."

**MICHAELIS** "Okay. All right, I will open it up to the Commission now. Are there any comments or questions?"

**BARFIELD** "I have a comment. I am a little disturbed. Here we are talking about a 500-foot radius in some neighborhoods, well all neighborhoods, basically, we are talking about a 200-foot radius. I have always felt that basically people in the neighborhoods should be notified when they are effected, even outside of the 200-foot range."

**KROUT** "We are hoping to have a discussion about notification in general. I think we are going to focus on Subdivision, but we are going to talk about notification in general at either a workshop session or at the end of a

Planning Commission meeting in the next four or six weeks. We have already sent you a copy of what other planning commissions do. That is a subject that maybe will turn up."

**OSBORNE-HOWES** "I think it would be a good idea to send it to the District Advisory Boards to get their comments on this. They may have some of the same concerns that were addressed by the industry today, or they may have another side to it, too. They may also identify some areas that no one on the Planning staff thought of when they were identifying some of this.

And then I also wondered what are other communities doing? Are they designing the same type of criteria that were designed by the staff in creating the absence of something similar to what we are looking at? Is this typical?"

**KROUT** "I think it is unique. I think there are some communities that don't require it at all, and then there are some communities that say it may be required as part of an application for any application throughout the city. We were trying to compromise, as usual."

**OSBORNE-HOWES** "I just thought that in some ways this might help a wireless company coming into town—looking at this map. It could help as well. I sure would like to have feedback from the District Advisory Boards. Is this just for the City or the City and the County? Okay. If this is for the County, too, some kind of feedback from people who live in the County as well."

**PLATT** "I have no objection to any of the blue areas on the map. I think there are reasons why they are there, and they were good reasons. But I certainly agree with comments that have been made about the fact that we certainly do not want to imply that residents in those areas are going to be treated differently than residents in other areas. Somehow, that has to be foremost in any kind of plan we put out. Secondly, I want to state that in my opinion, there are a good many reasons for a public body to make decisions other than businesses reasons."

**JOHNSON** "I have no problem with the DAB hearing it, but I think, also, that it is only fair that the specialists in this area ought to be contacted and be involved in it, too. Just to hear one side doesn't really help my decision very much. If I hear both sides, then I can draw a conclusion. I find it kind of ironic that here we were asked to do something on this today and some of these people had to hear it from somebody else who had heard it somewhere else. I don't care for that kind of a deal."

**MICHAELIS** "Are there any other comments? I would like to ask the people that spoke on it; does anybody have an idea on how it would work best as a co-mingling type thing between the industry and the DABs, or the neighborhoods? Do you have any suggestions as to how to pull this off?"

**FERRIS** "I will only speak for myself. I would prefer, if we are going to go in that direction that we would do something similar where staff might invite, rather than go to each individual DAB. That would be a lot of meetings and frankly, you can go to DABs and everyone can have a different prospective and you also, then, get the City Council member involved, which may or may not be a good idea on this because if I was now the District V Council member and I looked at this map, I would be a little perturbed that my district didn't really have much blue other than a park that I had control of through three other votes anyway.

But I would suggest that staff would—they have the lists of people who were involved in all of the hearings at the plan stage; that included neighborhood folks, that included industry folks—drop them a note and set up a time and a place where we could all sit in a room and discuss these issues in a workshop setting versus going to six different meetings where you will have probably an over emphasis on industry people there parading through each meeting. This whole thing was set up to be designed as kind of a planning tool by the Planning Commission to evaluate, that is the way it was written in the ordinance, so I think that a workshop with staff and then come back and then notifying those folks as well of the public hearing at that meeting and when it is going to be on the agenda again, so that all of the industry and all of those people that were involved in the plan adoption stage and those kind of things, I think would be the most appropriate. That is just my personal opinion."

**MICHAELIS** "Okay. Does everyone pretty well agree with that? Okay."

**WARREN** "A little bit of my concern is how much of this are we going to have to duplicate to get on with this? Are we going to have to go back down and open the whole thing up in August when we review our Wireless ordinance? Is that going to have to go to the DAB, or is that just going to be something we are going to do here? I guess I need staff's reaction here. If we are going to have to do it all again, I am not so sure we shouldn't pull it together and do it once, which would be this document as well as the other considerations we are going to have in that session we will have to monitor our ordinance."

**MICHAELIS** "Do you care to answer that? I don't know if you can answer it. I'm not trying to put you on the spot."

**KROUT** "I don't mind delaying this until August or September when we open up the whole coalition, and then we will bring this part of it back, too."

**PLATT** "I can understand the concern about the time it will take to go to DABs—it will—but I don't see how we can do anything but that run this by them, either now or later. Either way, I think we ought to do it."

**OSBORNE-HOWES** "I think it would be a mistake ultimately if we ignored the DABs. I think public hearings are a good idea, too, but I think that the DAB is a necessary part of this. And secondly, I think that putting this off until August or September really moves this process out another year. This is going to take a while. This kind of information would be excellent background so that when you do start reviewing how this is working in August, you've got some information. So to me, the sooner you get started with it, the better."

**MICHAELIS** "I don't disagree with that, but I don't know that all of the ducks are in the right order to start it."

**OSBORNE-HOWES** "Well, the best time to get input is prior to when you make the decisions, not after."

**MICHAELIS** "Any further comments? Do we need a formal motion on this?"

**KROUT** "We should have a motion to direct us to take this issue out in whatever process we will use to review the ordinance and the Wireless Plan."

**MOTION:** That the item be held until it can be worked into the overall Wireless Plan concept so the two can work together.

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

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**Continuation of agenda Item No. 1 – DR 2001-0002**

**KAREN DURANLEAU** "First, I would like to say that the proposed amendments to mirror exactly, the County Resolution as is. We tinkered a little bit with maybe changing something for this Commission and we decided that that might be a dangerous thing to do under such pressure. If the Commission insists on having something changed, then we would want to have a 2-week deferral on that. We would also want to make a change to the County Code so that we have the County Code in conformity with whatever we would change for this Commission.

Before the Commission rules on a request for a deferral, I would like to clarify a few things that came up before if I might. First of all, the KSA 12-70 B—I referred to that earlier—I brought a copy with me and I will pass it around. But it does say—this is Section B—the governing body may adopt, in the manner as provided by 12.741, an amendment thereto, reasonable regulations for the gradual elimination of sexually oriented business which constitute non-conforming uses. That is Section B.

Section A lists almost exactly the definitions that I have proposed for the Zoning Code. There is one minor change, on the adult cabaret, we had to take out the bar section, because an adult cabaret in the County Code means no alcohol. So I will pass this around and you can take a look at it. It makes it seem a little more real. This is your signal from the Kansas Legislature that you are authorized to make a Zoning Code like this that would regulate businesses. In that same chapter, 741 mentions that it is enabling legislation for counties and cities to enact for the protection, for the health, safety and welfare laws and regulations on the subjects which are not in conflict with the provisions of this act.

I see this Commission regulating a lot of things, and this is a business that needs to be regulated because of all of the problems, citizens complaining, etc. One of the clubs had a tuberculosis warning posted on their door for a period of a month or two, I think. There was a dancer that had contracted TB. Things of that sort. This is a business. This Commission regulates a lot of businesses, and this is a business that has a lot of problems associated with it, and a lot of neighborhood complaints in relationship to it. So I guess I would like to, first and foremost, see if the Commission would defer it for two weeks. If I might answer any more concerns so that I could be better prepared next time and maybe know what other concerns you might have.

The reason that we are here today asking this Commission for this is because when we first enacted the Code in the County, I wasn't personally there at the time, but our office was contacted by an attorney that represents one of these clubs. He said 'we are going to attack your Code because you haven't enacted under the Zoning Code. You should have enacted that way'. That is because of the statute that says that sexually oriented business can be regulated through zoning. That is from the KSA Zoning Code.

Now, we believe that we did have the ability to do that under the 'police power', but that is why we are here asking this Commission to act on this, because we feel that it is going to be attacked on that basis and we want to have all of our ducks in order. I will pass this around, if I might."

**MICHAELIS** "While you are doing that, the question I am going to come back and ask for a statement on is that I still think that the way that is written is incorrect and I personally would not be able to support this as written. I think it is totally unfair to ask a business that has been out in the middle of the country for 20 years to have to relocate just because he was there before June 28, 2000, and somebody could come along on June 29 of 2000 and build the same type of business and not have to relocate. I don't think that is correct. I couldn't support that."

**WARREN** "Is this document in its present form a proposal? Has it been presented to the County Board of Commissioners for their review and/or endorsement yet?"

**DURANLEAU** "The document which would amend the Zoning Code?"

**WARREN** "Yes, the one we are going to be looking at here."

**DURANLEAU** "No."

**WARREN** "It hasn't?"

**DURANLEAU** "Do you mean a formal presentation to the County Commissioners?"

**WARREN** "They kind of generated the spirit of this thing, I think, to that level. I thought maybe you had been working with them."

**DURANLEAU** "Of course, they indicated their spirit and intent when they enacted the Code in June, and in keeping with that, I assume that they would want to see everything fulfilled out of that spirit and intent, and that is one reason why we are here."

**WARREN** "My question is that it really isn't coming to us with their endorsement at this point?"

**DURANLEAU** "A formal endorsement, no. But as I said, this does exactly mirror the County Code, which was enacted in June, so therefore, it would have been within their spirit and intent at that time."

**GAROFALO** "You are asking for a deferral for a couple of weeks?"

**DURANLEAU** "Yes. I just want to..."

**GAROFALO** "What will happen in those two weeks?"

**DURANLEAU** "Well, if it is this Commission's intent that that provision where an adult business would have to move if someone else moved in beside it that wasn't allowed to be there. If that is this Commission's intent, and that is what I am hearing, then we would like to have some time to sit down and draft something. This is a very complicated Code. It has a lot of provisions that really need to be looked at. We would hate to do something that would gut the whole thing if we did it in a rush."

**MARNELL** "I think you may have answered what I was going to ask. It had to do with the question we asked earlier, if a business moved in, set up legally and a residence occupied a space within 1,000 space if that would immediately put them out of business or if they had an amortization. I think you don't know the answer to that yet."

**DURANLEAU** "Donna, do you want to address that?"

**GOLTRY** "If a business were to move in today—if the sexually oriented business was already properly located and licensed and if the other type of use like the church or the school were to move in within their 1,000 foot radius, then that other use has elected to come within their 'domain' as it were, they would be exempt from these provisions."

I am thinking that the issue you are looking at is that you are worried about the difference between June 28<sup>th</sup> and.."

**MICHAELIS** "The way this is written is the only business that would be exempt under your scenario is one that started after June 28 of 2000."

**GOLTRY** "Uh, huh, and I think what has not been clarified today is—from what I have been told—there probably are no businesses that fall into that other category that you are concerned with. That is the reason why it was probably not originally included as one of the exceptions within the Code that was adopted a year ago."

**MICHAELIS** "That is pretty arbitrary. Do we know that for a fact?"

**GOLTRY** "That is why they are asking for a deferral; they want to verify that. They want to make sure that that is the case."

**MOTION:** That the item be deferred until the April 19, 2001 meeting.

**GAROFALO** moved, **COULTER** seconded the motion, and it carried unanimously (12-0).

**MICHAELIS** "Do we have any other matters?"

**KROUT** "I want to remind you that you have a special meeting scheduled for next week. We had originally said it would be at 11:30, but we have been asked by KDOT to back that up so that you can have a second item, and I think you have received a revised notice. It will be at 11:00 a.m. here in this room next week. The idea is to spend from 11:00 to 12:00 with KDOT to talk about their long-range plan and how Wichita/Sedgwick County fits in, and then from 12:00 to 1:30, before the Subdivision Committee meeting, to talk about the Zoning Code.

If the County Counselor thinks that they can come back in one week with that information, we could take about it as part of the Zoning Code, but if you feel like you need two weeks, then we would leave it at April 19."

**DURANLEAU** "We could come back in a week and may have to ask for another week at that time."

**KROUT** "Do you want to amend your motion to April 12, then?"

**AMENDED MOTION:** That the item be deferred one week to April 12, 2001.

**GAROFALO** moved, **COULTER** seconded the motion, and it carried unanimously.

**MICHAELIS** "Are there any other items to be brought to the Commission? If not, I would entertain a motion to adjourn."

**MOTION:** That the Metropolitan Area Planning Commission be adjourned.

**GAROFALO** moved, **BLAKE** seconded the motion, and it carried unanimously.

The Metropolitan Area Planning Commission formally adjourned at 4:30 p.m.

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

I, Marvin S. Krout, 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 \_\_\_\_\_, 2001.

\_\_\_\_\_  
Marvin S. Krout, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)