

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

March 27, 2008

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 27, 2008, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: M.S. Mitchell, Chair; Don Anderson, Vice Chair; David Dennis; Darrell Downing; David Foster; Michael Gisick; Bud Hentzen; Hoyt Hillman; Bill Johnson; Ronald Marnell; John W. McKay Jr.; Debra Miller Stevens; Don Sherman and G. Nelson Van Fleet. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Derrick Slocum, Associate Planner and Maryann Crockett, Recording Secretary.

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1. Approval of the March 13, 2008, MAPC minutes.

MOTION: To approve the minutes as amended.

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

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2. Consideration of Subdivision Committee recommendations from the meeting of March 20, 2008.

❖ **PUBLIC HEARINGS – VACATION ITEMS**

- 2-1. **VAC 2008-06: Request to vacate multiple platted access easements and a platted utility easement**

OWNER/APPLICANT: Terradyne Residential LLC

AGENT: Poe and Associates, c/o Kenny Hill

LEGAL DESCRIPTION: The 5-foot wide platted maintenance access easements located on Lots 2-12 and the 5-foot wide platted utility easement located on Lot 9, all in Block 2, all in Terradyne West, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located between I-35 and Central Avenue, west of 159th Street East, along Brookhaven Drive and Majestic Street (WCC #II)

REASON FOR REQUEST: Associated with proposed multiple boundary shifts

CURRENT ZONING: The subject property and all abutting and adjacent eastern properties are zoned SF-5 Single-family Residential (“SF-5”)

The applicant proposes to vacate the described platted maintenance access easements and the platted utility easement. All of the easements are located along the interior side yards of the described residential lots, from their front yards to their back yards. The platted maintenance access easements are to be used for (per the platlor’s text) pedestrian emergency access, construction, maintenance, the extension of footings and a 2-foot overhang of the structure on the adjacent lot. This type of easement is used for the

development of “zero lot line” subdivisions (Subdivision Regulations, Art. 7, Part 2, 7-205, M), however no reference is made to “zero lot line” development on the plat. A “zero lot line” development’s lots will have no setbacks and this should be referenced on the plat. There are no manholes, water or sewer lines in the described easements. Westar has equipment in an easement; Westar needs to identify that easement(s) where the equipment is located. The applicant proposes to create new parcels with boundary shifts, thus the need to remove the platted easements. The Terradyne West Addition was recorded with the Register of Deeds December 12, 2006.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, Storm Water, franchised utility representatives and other interested parties, planning staff recommends approval to vacate the described multiple platted maintenance access easements and the described platted utility easement with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time on March 6, 2008, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described platted multiple easements and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the multiple platted easements described in the petition should be approved with conditions:
- (1) Provide Staff with any required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
 - (2) Provide Public Works with the new square footage for each of the reconfigured lots to address the respreading of the moneys involved in the specials (water, sewer and drainage) for the properties.
 - (3) Reference that a “zero lot line” development’s lots will have no setbacks in either the Vacation Order or on the plat, as advised by the Law Department.
 - (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary, provide franchised utilities (Westar) with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated.
 - (5) All improvements shall be according to City Standards and at the applicants’ expense.
 - (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE’S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Staff with any required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
- (2) Provide Public Works with the new square footage for each of the reconfigured lots to address the respreading of the moneys involved in the specials (water, sewer and drainage) for the properties.
- (3) Reference that a “zero lot line” development’s lots will have no setbacks in either the Vacation Order or on the plat, as advised by the Law Department.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities (Westar) with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated.
- (5) All improvements shall be according to City Standards and at the applicants’ expense.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendation.

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

2-2. VAC 2008-07: Request to vacate the platlor's text to amend the uses allowed in a platted easement

OWNERS/APPLICANTS: Jim F Rosenhoover & Suzanne M Seaman Dragan Djuric
Kay R Womack Robert R & Denise Denny

LEGAL DESCRIPTION: The uses allowed in the platted 20-foot utility - walk easement located between Lots 10, 28 (north side), 11 & 29 (south side), all in Block 2, Brookhollow Third Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located south of Central Avenue, east of Rock Road, between Overbrook and Stone Ridge Lanes (WCC #II)

REASON FOR REQUEST: Remove the walk for security reasons

CURRENT ZONING: Subject property and all abutting and adjacent properties are zoned SF-5 Single-family Residential (“SF-5”)

The applicants are requesting that the uses allowed in the described platted easement be vacated and amended. Currently the platlor’s text (and the plat) identifies that this easement is to be used for utilities and a walk. For security reasons, the applicants’ request the vacation to remove the walk use and thus

allow fences and gates over the easement. Currently there is a sidewalk in the easement, which runs between the applicants' residences, in their interior side yards. There are sewer lines in the platted easement. The Brookhollow Third Addition was recorded with the Register of Deeds June 29, 1973.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, Water and Sewer, Storm Water, franchised utility representatives, and other interested parties, Planning Staff recommends approval to vacate the plattor's text to amend the uses allowed in the described platted easement with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time on March 6, 2008, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described plattor's text to amend the uses allowed in the described platted easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the plattor's text to amend the uses allowed in the platted easement described in the petition should be approved with conditions:
 - (1) Vacate the plattor's text, amending it by removing the use of a walk in the platted easement located between Lots 10, 11, 28 & 29, Block 2, Brookhollow Third Addition. The described platted easement will remain a utility easement.
 - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
 - (3) All improvements shall be according to City Standards and at the applicants' expense, including the removal of the sidewalk.
 - (4) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the plattor's text, amending it by removing the use of a walk in the platted easement located between Lots 10, 11, 28 & 29, Block 2, Brookhollow Third Addition. The described platted easement will remain a utility easement.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.

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

WILLIAM LONGNECKER, Planning staff presented the staff report.

MOTION: To approve subject to staff recommendation.

SHERMAN moved, **ANDERSON** seconded the motion, and it carried (14-0).

❖ **PUBLIC HEARINGS**

3. **Case No.: ZON2008-09** – Dagoberto Hernandez (owner/applicants), Max Christensen (agent) Request City zone change from "LC" Limited Commercial to "GC" General Commercial on property described as:

The South 200 feet of the East 180 feet of Lot 4, EXCEPT the North 133 feet thereof, Goulds Gardens Addition, Sedgwick County, Kansas.

AND

The North 73 feet of the East 150 feet of Lot 3, Gould Gardens, Sedgwick County, Kansas, Except the East 30 feet dedicated for Street.

AND

The West 52.50 feet of the North 7.50 feet of the South 74.50 feet of the East 180 feet of Lot 4, Gould Gardens, Sedgwick County, Kansas. Generally located on the west side of Arkansas Avenue 1/2 block south of 29th Street North.

BACKGROUND: The application area is located on the west side of Arkansas Avenue, ½ block south of 29th Street North, and is currently zoned LC Limited Commercial ("LC"). The site currently is developed with an existing commercial building that contains manufacturing equipment for the making of ice cream, and a restaurant with a seating area. The use of the site as a restaurant and manufacturing of ice cream are legal activities in the LC district, per the Unified Zoning Code ("UZC"). Manufacturing of the ice cream is a legal activity so long as the machine used for the manufacturing does not exceed two-horsepower. However, this particular ice cream manufacturing is done with a machine which is powered by a motor that exceeds two horsepower, approximately 10 horsepower. The two-horsepower threshold is defined in Section II-B.8 (f) of the UZC as "Manufacturing, Limited." Manufacturing of goods with equipment that exceeds two-horsepower is classified by the UZC as "Manufacturing, General," which is first allowed by-right in the GC General Commercial ("GC") district.

The zoning of the surrounding property is predominately LC. Property to the north and west of the subject site is zoned LC, and is currently developed with single-family residences. Property to the south of the subject site is also zoned LC, and is developed with single-family residences and one vacant lot. Property to the east of the subject site is zoned both LC and GC. The development that currently exists on the property east of the subject site consists of warehousing/storage uses, retail, office uses and a single-family residence.

The subject site is in Flood Zone X, which identifies the area being in a flood insurance rate zone that corresponds to areas outside the 100-year floodplain, and by areas protected from the 100-year flood by levees.

CASE HISTORY: The application area is platted as part of the Gould Gardens Addition, recorded May 1, 1914.

ADJACENT ZONING AND LAND USE:

NORTH:	“LC”	Limited Commercial	Residence
SOUTH:	“LC”	Limited Commercial	Residence
EAST:	“LC” & “GC”	Limited & General Commercial	Retail Store & Warehouse
WEST:	“LC”	Limited Commercial	Residence

PUBLIC SERVICES: All public services are available to the site. 29th Street, north of the subject site, is a paved three-lane minor arterial with approximately 14,200 average daily trips. Arkansas Street is a paved two-lane minor arterial with approximately 11,800 average daily trips.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as “Local Commercial.” “This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing.” In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the **Commercial/Office Objective** to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as **Strategy III.B.3** that recommends working with property owners and businesses to reduce the number of access points along arterial streets, thus improving traffic safety and flow. **Strategy III.B.6** recommends that traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.

Commercial Locational Guideline #1 of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The proposed development complies with this guideline. **Commercial Locational Guidelines #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use; **#5** commercially-generated traffic should not feed directly onto local residential streets; and **#6** commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other 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.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the provisions of Protective Overlay No. 209:

1. Uses permitted on the site are limited to those permitted in the LC Limited Commercial zoning district; with the only GC General Commercial “manufacturing, general” use permitted on this site is the manufacturing of ice cream with machinery not exceeding 10 horsepower.
2. Screening (fencing, evergreen vegetation or landscaped earth berms) six to eight feet in height shall be provided along south and west property lines. If fencing is the primary screening material, then landscaping of one tree and three shrubs every 30 feet shall also be supplied.
3. No off-site or portable signs are allowed. Signs, in accordance with the sign code, are permitted along Arkansas Avenue.
4. On site pole lighting will be no taller than 15-feet including the base/pedestal. Pole lighting will

be directed down onto the site away from adjacent residential development. No pole lighting will be placed within setbacks.

5. The site shall be developed in conformance with all applicable regulations.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning of the surrounding property is predominately zoned LC. Property to the north and west of the subject site is zoned LC and is currently developed with single-family residences. Property to the south of the subject site is also zoned LC and is developed with single-family residences and one vacant, commercially zoned lot. Property to the east of the subject site is zoned both LC and GC. The development that currently exists on the property east of the subject site consists of warehousing/storage uses, retail, office uses and a single-family residence.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC Limited Commercial. The LC district permits a wide range of retail and office uses that would be appropriate at this location.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The land located to the east is already zoned GC General Commercial. Approval of this request will not introduce zoning or potential uses into the area that do not already exist. The machine triggering the need for the rezoning is located inside a building, minimizing any potentially detrimental affects.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would cause the applicant economic loss for a business that has been in operation for several years. Approval of the request will allow this business to grow and compete more successfully in the future without introducing a new zoning district into the area.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as “Local Commercial.” “This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing.” The current zoning request for GC, subject to the recommended protective overlay, for the 0.3-acre subject site is in conformance with the Comprehensive Plan’s recommended development. In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the Commercial/Office Objective to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as Strategy III.B3 working with property owners and businesses to reduce the number of access points along arterial streets, thus improving traffic safety and flow. Strategy III.B.6 Channel traffic generated by commercial activities to the closest major thorough-fare with minimum impact upon local residential streets.
6. Impact of the proposed development on community facilities: As recommended, the existing use will remain in operation so there will be no change in the type of use or operation. All services are in place, and any increased demand on community facilities can be handled by current infrastructure.

DERRICK SLOCUM, Planning staff presented the staff report.

R.L. ROBERTSON, 4001 WEST 19TH ST, BUILDING/CONTRACTOR for the ice cream store said the only reason for the General Commercial zoning request was that the motor that runs the ice cream machine is larger than the two horsepower allowed under the City Code for Limited Commercial zoning.

RICHARD SIMON, 2942 SHELTON said he lives directly behind the restaurant. He said he is all for progress and doesn't want to keep kids from eating ice cream, but that he was concerned about how much more noise the new horsepower engine was going to create because he said he likes to enjoy his backyard. He also asked what kind of material will be used for the fence.

SLOCUM briefly reviewed the protective overlay in the staff report related to screening. Responding to a question from **MR. SIMON**, he said future uses will be limited to those permitted in Limited Commercial zoning. He also clarified that the business was currently using the motor that exceeds two horsepower and that it was located inside the building.

HENTZEN said he thought this was a weak excuse to grant General Commercial zoning on a property.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (13-1).

HENTZEN – No.

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4. **Case No. ZON2008-10** – David Lowry (Owner); Christian Ablah (Applicant); Poe & Associates, Attn: Tim Austin (Agent) Request City zone change from "B" Multi-family and "MF-29" Multi-family to "LC" Limited Commercial on property described as:

Lot 1 & N 33.51 feet of Lot 3, Block 2, East Boulevard Addition, Sedgwick County, Kansas.
AND

The South 16.49 feet of Lot 3 and all of Lot 5 & N 8.51 feet of Lot 7, Block 2, East Boulevard Addition, Sedgwick County, Kansas. Generally located 454 North Bleckley and 446 North Bleckley.

BACKGROUND: The applicant is requesting a zone change from B Multi-family Residential ("B") (Lots 1, 3 and the north 40.51 feet of lot 5) and MF-29 Multi-family Residential ("MF-29") (the south 9.49 feet of lot 5 and the north 8.51 feet of lot 7) to the LC Limited Commercial ("LC") district. The application area contains approximately 0.4-acres with 128 feet of frontage located along Central Avenue, one block east of Oliver. These lots are developed with two four-plexes, one on each lot, built in the early 1940's, with what appears to be less than five off-street parking spaces serving eight dwelling units. The applicant proposes the rezoning to allow for the highest and best use to allow commercial development.

The majority of residential development in this area is located between Bleckley Drive (west) and Pinecrest Avenue (east), along the south side of Central Avenue. This development consists of four-plexes, duplexes and single-family residences zoned B or MF-29. Most of these multi-family structures appear to have been built in the early 1940's.

Property south of the subject site is zoned MF-29, and is developed with a four-plex, also built in the early 1940s. Property east of the site is zoned B and developed with single-family residences. Property north of the subject site, across Central Avenue, is zoned LC, and is developed with a fast food restaurant. West of the subject site, across Bleckley Drive, the property is zoned LC, and is developed retail strip store.

The subject site is located in flood zone AE. The AE flood zone is a flood insurance rate zone that corresponds to the 100-year floodplain that is determined in the Flood Insurance Study by detailed methods. Mandatory flood insurance purchase requirements apply. The waterway that flows through this area, the West Branch Dry Creek of Gypsum Creek, begins just north of Claude Lambe Park and travels south through the LW Clapp Golf Course before joining Gypsum Creek southeast of Hillside and Pawnee.

CASE HISTORY: This site is platted as the East Boulevard Addition, approved in 1930. There was an attempt to rezone this property in 1990-91 (Z-3010) to LC but the City Council denied that request and forwarded the request back to the Metropolitan Area Planning Commission (MAPC) for consideration of OC Office Commercial (“OC”) zoning (or converted in 1996 to NR Neighborhood Retail (“NR”) district). The OC zoning was approved by the MAPC, and returned to the City Council which approved the OC zoning subject to replatting within one year. The property was never replatted during the one year time span, and was allowed to lapse by the applicant. The rezone never took effect due to the property not being replatted.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Limited Commercial	Fast Food Restaurant
SOUTH:	MF-29	Multi-family Residential	Four-plex
EAST:	B	Multi-family Residential	Single-family Residential
	TF-3	Two-family Residential	Duplex
WEST:	LC	Limited Commercial	Retail Strip Store

PUBLIC SERVICES: All public services are available at the subject site. Central Avenue is a four-lane principal arterial with 40,801 Average Daily Traffic (ADTs). Nearby, Oliver Avenue is a four-lane minor arterial with 31,853 ADTs. Bleckley Drive is a local residential street, but is not classified on the Federal Roadway Functional Roadway Map. The intersection of Central and Bleckley is not signalized. The subject site currently has access drives on to both Central and Bleckley.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” depicts this site as “Urban Residential.” This category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The Functional Land Use Guide shows the south side of Central, from Bleckley to Pinecrest, to retain the existing residential zoning classification. From Pinecrest to Edgemoor, the guide favors LC zoning or rezoning requests. Zoning and rezoning requests for LC or GO General Office (“GO”) are favored on the north side of Central from Oliver to Edgemoor. The commercial location guidelines indicate the stripping out of commercial zoning along arterial streets is undesirable. Also the location guidelines state that commercial uses should locate in compact clusters or nodes versus extended strip developments, commercially-generated traffic should not feed directly onto local residential streets and commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other 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.

RECOMMENDATION: The application area is small for most modern LC uses. To encourage the redevelopment of this site with land uses which will maintain a degree of compatibility with the residential land uses to the south and east and to establish a new zoning classification on the property which is more in line with the commercial and office land uses to the west and north, and which recognizes the fact that this site fronts onto a arterial street, staff recommends that the request for LC not be approved, but instead staff recommends that the property be zoned NR. Neighborhood Retail zoning would establish a transition area between the existing non-residential uses in the area and the neighborhood to the south and east because the NR districts limits individual retail uses to a maximum size of 8,000 square feet; restaurants are limited to a maximum size of 2,000 square feet and drive-through service is prohibited. Other development standards also apply to the NR district, but the NR

district would provide for land uses which typically produce fewer vehicular trips than would be generated by LC land uses.

Based upon information available prior to the public hearings, planning staff recommends that the request for LC Limited Commercial zoning be DENIED, however, if the Planning Commission feels the request is appropriate, staff would recommend APPROVAL of NR Neighborhood Retail zoning, subject to replatting within one year, and dedication of complete access control along Bleckley Drive, and dedication of access control except for one opening along Central Avenue.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property south of the site is zoned MF-29. The MF-29 property is developed with a four-plex, built in the early 1940s. Property west of the site is zoned B, and developed with single-family residences. Property north of the subject site, across Central Avenue, is zoned LC, and is developed with a fast food restaurant. East of the subject site, across Bleckley Drive, the property is zoned LC, and is developed retail strip store.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned B and MF-29. The B district permits a reasonably lengthy list of permitted uses including a variety residential uses and medical services. The site could probably be adapted to uses currently allowed. The site contains .4 acre, which is a small area for most current day retail uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of LC zoning would introduce some uses not in character with adjacent existing residential uses. Commercial uses generate more average daily traffic; introduce larger signage and more lighting than is found in typical residential areas. Approval could encourage other property owners seek similar zoning up and down Central Avenue that could impact Central Avenue's ability to carry the traffic it was designed to carry.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If approved, presumably this request would generate more economic return for the applicants than leaving the site as currently zoned. From the public's standpoint, approval of this request would be a case of encroachment of commercial zoning into an established neighborhood and would not be consistent with the community's adopted plan that encourages the use of zoning as one of the tools to promote and enhance neighborhood stability and investment.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide" depicts this site as "Urban Residential." This category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The Functional Land Use Guide shows the south side of Central, from Bleckley to Pinecrest, to retain the existing residential zoning classification. From Pinecrest to Edgemoor, the guide favors LC zoning or rezoning requests. Zoning and rezoning requests for LC or "GO" General Office are favored on the north side of Central from Oliver to Edgemoor. The commercial location guidelines indicate the stripping out of commercial zoning along arterial streets is undesirable. Also the location guidelines state that commercial uses should locate in compact clusters or nodes versus extended strip developments, commercially-generated traffic should not feed directly onto local residential streets and commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other 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 Wichita City Council found that OC zoning or its current equivalent of NR zoning was appropriate in 1990.
6. Impact of the proposed development on community facilities: All services are in place, and any

increased demand on community facilities can be handled by current infrastructure.

DERRICK SLCOUM, Planning Staff reported that the applicant/agent requested a two-week deferral on the case.

MITCHELL confirmed that there were no members from the public present to speak on the item.

MOTION: To approve the requested two-week deferral.

SHERMAN moved, **ANDERSON** seconded the motion, and it carried (14-0).

- 5. **Case No. ZON2008-11** – James Long and Ken & Julia Kerr (Owners/Applicants); Baughman Company, P.A., Attn: Phil Meyer (Agent) Request County zone change request from "SF-20" Single-family Residential to "LC" Limited Commercial on property described as:

The North 208.72 feet of the West 417.42 feet of the Northwest Quarter, EXCEPT West 50 feet for right-of-way, Section 27, Township 26, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

AND

Lot 1, Gresham Second Addition, Sedgwick County, Kansas. Generally located East of Ridge Road and south of 45th Street North (4530 North Ridge and 7101 West 45th North).

BACKGROUND: The applicants request a zone change from “SF-20” Single-family Residential to “LC” Limited Commercial on a site encompassing 3.2 acres on two properties, one property being platted and the other unplatted. The platted property (4530 North Ridge Road) is 1.7 acres in size, while the unplatted property (7101 West 45th Street North) is 1.5 acres in size. Both properties are located in the unincorporated County, and located at the southeast corner of Ridge Road and 45th Street North. The subject site is currently developed with single-family residences. The applicants have no specific use for the proposed zoned change.

The surrounding area is characterized by large undeveloped and developed SF-20 zoned single-family residential tracts, sandpits and retention ponds/drainage reserves. Nonresidential uses are likely to be developed immediately to the large tract located to the east and south of the application area due to the 2006 rezoning of 55+ acres from SF-20 to LC (DP-301), subject to replatting. A residential subdivision was approved in 2006 further east of the subject site. The property west of the subject site (across N. Ridge Rd.) is zoned SF-20, and is developed with a single-family residence. The property directly south of the subject site, fronting Ridge Road, is zoned SF-20, and is developed with a single-family residence.

CASE HISTORY: The subject site encompasses two properties, one being platted and the other being unplatted. The unplatted property (7101 W. 45th St. N.) is located on the southeast corner of the intersection of 45th St. North and North Ridge Road. The platted property (Gresham 2nd Addition, recorded on November 7, 1979) is located south of the intersection, abutting the south property line of the unplatted property.

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-20”	Single-family Residential	Residence
SOUTH:	“SF-20”	Single-family Residential	Ag. Land
EAST:	“SF-20”	Single-family Residential	Residence
WEST:	“SF-20”	Single-family Residential	Residence

PUBLIC SERVICES: Both properties currently have access to Ridge Road, a two-lane paved minor arterial street with current traffic volumes of approximately 7,581 vehicles per day at this location. The

unplatted property at the intersection also has access to 45th Street North, a two-lane unimproved collector at this location. There are no traffic counts on 45th Street at this location. The half-width right-of-way (“ROW”) at the intersection, on 45th Street North, is 30-feet and 55-feet along Ridge. On the southern part of this application area, the half-width ROW is 65-feet along Ridge. According to the Access Management Guidelines, major intersections require a total ROW, at the approach, of 150-feet (75-feet from the section line) for a distance of 250-feet from the intersection. There will need to be dedication of ROW during replatting of the properties to bring the applicants part of the intersection up to current standards. The subject property does not currently have access to public sewer or public water service. The nearest sewer and water lines are located a half-mile south of the subject site, just south of Highway 96, on the west side of Ridge Road. Over time, water and sewer service will need to be extended up towards the subject site, which is scheduled to occur with the development of the CUP adjacent to the southeast property lines of the subject site. Zoning for the unplatted site should be granted subject to platting.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as an “Employment/Industry Center” within the Wichita 2030 Urban Growth Area. “This category encompasses areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices.” The current zoning request of LC for the 3.2-acre subject site is in conformance with the Comprehensive Plan’s recommended development. In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the **Commercial/Office Objective** to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as **Strategy III.B1** of regulating new strip commercial development to areas identified by the “Wichita Land Use Guide” and neighborhood/subarea plans for expansion. **Strategy III.B.3** seeks to reduce access points along arterial streets; the number of access points will be regulated by the Access Management Policy.

Commercial Locational Guideline #1 of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The proposed development complies with this guideline. **Commercial Locational Guideline #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use, and **#4** recommends compact clusters versus extended strip development.

RECOMMENDATION: Staff feels that this proposed rezone would be better served if it was combined with the adjoining C.U.P. Additional development standards have been place on this proposed rezone to protect the nearby existing single-family residences and to also be consistent with the aforementioned C.U.P.

Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the unplatted tract replatting within one year and to the provisions of Protective Overlay #208:

1. All uses allowed in the Limited Commercial zone district except: adult entertainment establishments, sexually oriented businesses, correctional placement residences, asphalt/concrete plant (limited and general), safety service, pawn shop, agricultural sales and service, commercial wireless communication facilities or theaters. Restaurants that serve liquor can be developed and may serve liquor, as long as food is the primary service of the establishment.
2. Setbacks on the south and east property line are to be similar to the adjoining C.U.P. and the north setback is to be 80’ from the centerline of 45th St. North and the west setback is to be 100’ from the centerline of North Rock Road according to Sec. III-E.1.2.e(3), Setbacks from major roadways, in the Unified Zoning Code.
3. Signs shall be in accordance with the Sedgwick County Sign Code with the following conditions:

As the frontage develops along the arterial roadways, monument type signs shall be spaced a minimum of 150' apart, irrespective of how land is leased or sold.

Flashing signs (except for signs showing only time, temperature and other public service messages), rotating or moving signs and signs with moving lights or signs which create illusions of movement are not permitted.

Portable and off-site signs are not permitted.

Window display signs are limited to 25% of the window area.

4. All exterior lighting shall be shielded to direct light in a downward direction.
5. All parcels shall share similar or consistent parking lot lighting elements (i.e., fixtures, poles, lamps, etc.)
6. Limited height of light poles to 24 feet.
7. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.
8. Utilities shall be installed underground on all parcels.
9. Rooftop mechanical equipment shall be screened from ground level view per Unified Zoning Code.
10. Trash receptacles, loading docks, outdoor storage, and loading areas shall be appropriately screened to reasonably hide them from ground view.
11. All buildings shall share uniform architectural character, color, texture, as determined by the Director of Planning. Building walls and roofs must have predominately earth – tone colors, with vivid colors limited to incidental accent. Metal as an exterior material shall be limited to incidental accent.
12. Cross-lot circulation agreements shall be recorded prior to the issuance of building permits to assure internal vehicular movement between the subject site and the adjoining C.U.P.
13. Access to the site is to conform to the Access Management Regulations.
14. No development shall occur until such time as municipal water and sewer service are provided to the site.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property west of the subject site (across Ridge Road) is zoned SF-20 and is developed with a single-family residence. East of the subject site is undeveloped property zoned SF-20 (rezoned to LC contingent on platting), and the property directly south of the subject site is zoned SF-20 and is developed with a single-family residence. Properties further to the east of the subject site are zoned SF-20, and are developed with single-family residences, while the properties to the north of the subject site (across 45th Street North) are also zoned SF-20 and developed with single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned SF-20 Single-family Residential. Due to its location next to an arterial street, the intersection of section line roads and plus its close proximity to an approved commercially zoned CUP, it is unlikely that the subject property will continue to be viable as single-family residential property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The scale and impact of any development within LC zoning should be mitigated by the site development requirements related to access management, landscaping, screening, lighting and signage.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as an "Employment/Industry Center" within the Wichita 2030 Urban Growth Area. "This category encompasses areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and

corporate offices.” The current zoning request of LC for the 3.2-acre subject site is in conformance with the Comprehensive Plan’s recommended development. In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the Commercial/Office Objective to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.”

5. Impact of the proposed development on community facilities: Drainage, access and ROW dedication could become issues in the development of this site, due to the size of the subject site, all of which will be addressed during the replatting of the subject properties.

MOTION: To approve subject to staff recommendation.

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

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6. **Case No.: ZON2008-12** – USD 262 (Owner); Baughman Company P.A., c/o Phil Meyer (Agent) Request County zone change from "RR" Rural Residential to "SF-20" Single-family Residential for a high school on property described as:

Government Lots 1 and 2 in the Southwest Quarter of Section 19, Township. 25-S, Range 1-East of the 6th P.M., Sedgwick County, Kansas EXCEPT there from a tract described as the North 30 acres of said Southwest Quarter, AND EXCEPT that part of Government Lots 1 and 2 in said Southwest Quarter platted as Valley Center Cemetery Addition, an Addition to the City of Valley Center, Sedgwick County, Kansas, AND EXCEPT that part of Government Lot 1 in said Southwest Quarter described as follows: A tract described as beginning at the Southeast corner of said Southwest Quarter; thence north along the east line of said Southwest Quarter, 732.02 feet; thence west parallel with the south line of said Southwest Quarter, 450.00 feet; thence south parallel with the east line of said Southwest Quarter, 430.27 feet; thence southeasterly 351.81 feet, more or less, to a point on the south line of said Southwest Quarter, said point being 280.00 feet west of the Southeast corner of said Southwest Quarter; thence east 280.00 feet to the point of beginning. Generally located North of 93rd Street North and east of Meridian Avenue.

BACKGROUND: The application area is zoned RR Rural Residential (“RR”), which requires a Conditional Use for an elementary, middle, or high school; the SF-20 Single-family Residential (“SF-20”) district permits schools by right. The applicant wishes to develop this site with one or possibly two schools, and therefore requests a zone change to SF-20. In addition to schools and churches permitted by right, the SF-20 zoning district differs from the RR zoning district in that it permits dwellings on lots of 20,000 square feet or larger whereas the RR zone has a two-acre minimum residential lot size.

The RR zoned site is currently used for agriculture. Property within the City of Valley Center borders this site to the north, and exists approximately 1,400 feet south of the site, and 2,700 feet east of the site. The site is within the Valley Center zoning area of influence, therefore this zone change request will go before the Valley Center Planning Commission. The site is currently in the platting phase also through Valley Center. The Valley Center property bordering this site to the north is vacant but designated for a cemetery. All other surrounding property is zoned RR and used for agriculture, with two single-family farmsteads southeast of the site.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: City of Valley Center, RR Rural Residential agriculture, future cemetery

SOUTH:	RR Rural Residential	farmstead, agriculture
EAST:	RR Rural Residential	farmstead, agriculture
WEST:	RR Rural Residential	agriculture

PUBLIC SERVICES: FEMA Flood zone runs through the middle of the site. Municipal sewer and water services are not available. The applicant anticipates annexation into Valley Center and utility extensions prior to operating a school on the site. Meridian is a two-lane paved arterial at this location with a 40 foot half-width right-of-way (“ROW”) at the site. The 2030 Transportation Plan designates this portion of Meridian to remain a two-lane arterial. 93rd Street North is an unpaved, two-lane section line road at this location with a 75-foot half-width ROW for most of the frontage, and a 45-foot half-width ROW for the east 350 feet. The 2030 Transportation Plan does not classify this portion of 93rd Street North. No traffic counts are available for either of these streets. The plat filed for this property conforms to the Sedgwick County Access Management Policy guidelines. Paving of 93rd Street North has been discussed; however, no final solutions have been determined.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts this site as within the Valley Center 2030 Growth Area. The Valley Center Comprehensive Plan recognizes the school district ownership and identifies the site as appropriate for public purposes. The Valley Center Plan also designates these portions of Meridian and 93rd to become 3 lane streets with turn lanes. The City of Valley Center intends to do a neighborhood plan including this site, to ensure planned compatibility with current and future residential areas.

The Wichita/Sedgwick County Unified Zoning Code (“UZC”) would require standard building setbacks, compatibility setbacks and screening of non-residential uses from residential uses, set height limitations, and set minimum parking requirements. Sedgwick County Building and Health codes would apply to this site. If the site is annexed by Valley Center prior to requesting building permits, the Valley Center codes will apply.

RECOMMENDATION: The proposed zone change is consistent with the Comprehensive Plan designation of this site as within the Valley Center Growth Area. Valley Center staff requires site plan review for building permits; Valley Center staff has indicated a desire to conduct a site plan review of proposed schools on this site. However, as a County zone change application, the Wichita/Sedgwick County UZC does not have a site plan review provision. If the Valley Center Planning Commission would like a site plan review of the proposed development, they can make such a recommendation on this zone change case. If the site is annexed into Valley Center prior to building, Valley Center will issue the building permits and conduct site plan review through that process.

Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to platting within one year.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The Valley Center property bordering this site to the north is vacant but designated for a cemetery. All other surrounding property is zoned RR and used for agriculture, with two single-family farmsteads southeast of the site.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned “RR” Rural Residential which primarily permits agricultural activities and large-lot residential uses. The site could be used under the current zoning for two-acre or larger lots.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Rezoning will permit residential development at four times the density that is permitted by the existing zoning, and will permit churches and schools by right. Development under the requested zoning would change the character of the immediate area, increase traffic, and increase demand for

public services such as law enforcement, fire protection, and code enforcement.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as within the Valley Center 2030 Growth Area. The Valley Center Comprehensive Plan recognizes the school district ownership and identifies the site as appropriate for public purposes. The Valley Center Plan also designates these portions of Meridian and 93rd to become 3 lane streets with turn lanes.
5. Impact of the proposed development on community facilities: The zone change and proposed development will increase traffic on Meridian and 93rd Street North. The proposed development would also increase demand on law enforcement, fire protection and EMS, and increase demand on water resources.

JESS MCNEELY, Planning staff presented the staff report.

MCNEELY reported since there was no quorum at the 3/25/08 Valley Center Planning Commission meeting, no official decision was made and that the matter would be presented again at the 4/8/08 meeting. He said speakers were heard on March 25, and although they were not necessarily opposed to the project, they were in support of some type of site plan review to prevent negative effects on their properties, which were generally located along the west side of the proposed site.

FOSTER clarified that the MAPC was approving the zoning request only, and that site plan review was not an issue under consideration.

MCKAY commented that site plan review is an important issue that will be addressed during the platting process.

CHRIS ROSE, BAUGHMAN COMPANY, P.A. AGENT FOR THE APPLICANT said they agreed with staff comments with the exception of the site plan review. He said they will voluntarily go through the site plan review; but don't want it to be a requirement of the conditions in the staff report. He said the condition could be that the application is subject to platting within one year of approval of the request and that they could work out the site plan review with the City of Valley Center.

MARY RUTH BYERLEY, 2810 WEST 93RD STREET NORTH said her property is located west of the proposed site and that she is representing the owners of property along 93rd Street North and Meridian. She commented that the property has been in the family for five generations; that they have a deep connection to the land; and that they rely on income from the farm. She said they are in favor of a new Valley Center High School and have supported the bond issue, although the location is unfortunate. She said they are concerned about how development of the school will impact the agricultural neighborhood and lifestyle. She said it is a rural neighborhood with dogs, horses, and people exercising and walking; that it is a dirt road; and that they chose to live on a dirt road and are opposed to having the road paved. She said they are concerned about the additional traffic on 93rd and Meridian and how that traffic will be handled. She said light pollution and drainage are also concerns. She said there are many decisions yet to be made regarding public works and annexation and they would like to be kept involved and be apprised of the decisions as they are being made.

HILLMAN clarified that she was concerned about any specials and other charges that may occur as the area is developed and streets are put in?

BYERLEY said yes, they are concerned about specials, the farm land, the dirt road, and the farm lifestyle. She also mentioned that she has heard there has been discussion about paving the east side of Meridian, not the west side.

FOSTER asked if the proposal is approved, what mechanism Sedgwick County has for site plan review.

MCNEELY said Sedgwick County has no mechanism for site plan review. He explained that several scenarios could take place. He said if this site stays in Sedgwick County, the building permit will be issued through the County where there is no requirement for site plan review. However, the applicant has indicated they would be willing to do an informal site plan review as a courtesy to Valley Center. He said if the area is annexed into Valley Center prior to a building permit being issued, then the building permit would be issued through Valley Center who would then have an opportunity to initiate the site plan review process.

MOTION: To approve subject to staff recommendation and to add a provision requiring a site plan review by Valley Center.

MCKAY moved, **ANDERSON** seconded the motion.

After discussion, **MCKAY** withdrew the original motion.

JOHNSON said even though the property may still be in Sedgwick County, Valley Center could still look at it.

SUBSTITUTE MOTION: To approve subject to staff recommendation and that the requirement of site plan review by Valley Center be voluntary rather than required.

JOHNSON moved, **MARNELL** seconded the substitute motion, and it carried (11-3).
ANDERSON, FOSTER, MCKAY – No.

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7. **Case No.: CUP2008-08** – NR6, LLC, c/o Gary Oborny (Owner); MKEC c/o Greg Allison (Agent) Request DP-111 Mediterranean Plaza Community Unit Plan Amendment #6 to create a new parcel from Parcel 1A, alter permitted uses, increase gross floor area and alter building height on property described as:

That part of Lot 2 beginning at the Northeast corner of Lot 1; thence Northeast 321.34 feet; thence Southeast 208.2 feet; thence East 102.12 feet; thence South 345 feet; thence West 465 feet; thence North 106.81'; thence Northwest 49.31 feet; thence North 262.76 feet to beginning, Block 1, Mediterranean Plaza Commercial Second Addition, Sedgwick County, Kansas.
Generally located south of 32nd Street North and east of Rock Road.

BACKGROUND: The applicant proposes to amend DP-111 Mediterranean Plaza Community Unit Plan to split the original Parcel 1A (4.79 acres) into two parcels. The property is zoned LC Limited Commercial ("LC").

Maximum gross floor area for the two parcels would increase from 85,302 square feet to a combined total of 108,062 square feet. The ratio of floor area to land area would go from 0.4 to 0.64 for new Parcel 1A and 0.3 for Parcel 1B, with a combined ratio of 0.52. Maximum building coverage would remain 30% for both parcels. Building setbacks would remain 50 feet along 32nd Street North. An interior, side and rear setback line of 15 feet would be added to both parcels. Building heights would be increased from 45 feet to 60 feet for new Parcel 1A and reduced to 35 feet for Parcel 1B.

The new parcel (Parcel 1B, 1.74 acres) would occupy the western one-third of the existing Parcel 1A and allow 22,760 square feet of gross floor area. Proposed use of the parcel is for a possible restaurant and retail space.

The area remaining in Parcel 1A (3.04 acres) is occupied by an existing building being converted from a multi-plex movie theater (Northrock 6 Cinema) to a three-story office building. Currently, the roof is being raised to add the third story to the building. At completion, it will have around 85,000 square feet in gross floor area.

As requested, permitted uses for Parcels 1A and 1B would be all uses allowed by right in the LC zoning district except the following uses: group residence, general and limited; correctional placement residence, general and limited; recycling collection station, private and public; utility, major and minor; heliport; kennel, boarding/ breeding/ training; night club in the City and County; pawnshop; sexually oriented business; cemetery and all industrial/ manufacturing/ extractive uses.

Currently, the CUP lists “proposed” rather than “permitted” uses, but adds the interpretive clause of “other similar uses” to the list of proposed uses. This makes it difficult to compare the commercial uses in effect today versus those that would be permitted if the amendment is approved.

However, the list of proposed uses in effect is exclusively commercial uses, which could be construed to exclude residential or public and civic uses. By this amendment, residential or public and civic uses would be allowed unless specifically excluded. The amendment affirmatively prohibits all industrial/ manufacturing/ extractive uses.

The amendment initially requested to allow an off-site sign along Rock Road for Parcels 1A and 1B. Technically, the City treats the entire CUP as a single zoning lot for issuing sign permits. Therefore, any sign along Rock Road would be treated as onsite for any parcel within DP-111, and this request has been withdrawn.

The amendment does not request any variations on parking requirements. The existing site had some surplus parking gained by the conversion from theater to office use since the Unified Zoning Code (“UZC”) parking requirements are less for office. However, the additional restaurant and retail space will occupy about 80 of the existing parking spaces plus it will increase the total parking requirements for Parcels 1A and 1B. If the site is inadequate to provide the parking generated by the amount of floor area requested by the applicant, the applicant will have to obtain either offsite parking agreements or shared parking agreements prior to being able to receive building permits for further intensification of the site (or provide parking structures). A parking analysis to document that adequate parking per the UZC requirements should be required prior to issuing any additional building permit on these parcels.

Internal and cross lot access within DP-111 is based on a 50-foot access easement that runs north-south approximately 225 feet east of Rock Road. Staff would recommend that channelization for the free flow of vehicles and direct access to parking spaces from the access easement is prohibited

DP-111 is fully developed except for a vacant portion of Parcel 1 (Lot 3, Block 1, Mediterranean Plaza Commercial Second Addition) held in different ownership from Parcel 1A and located to the northeast of the application area. Other uses on DP-111, all on property zoned LC, include the Dairy Queen to the west, three strip center buildings with several restaurants, retail including a Petco, and office tenants to the southwest, a bowling alley to the south, a Wal-Mart on the next parcel to the south. The 14-screen movie theater is located on the adjoining CUP to the southeast. The property to the north of 32nd Street North includes another strip commercial building and a large office building.

CASE HISTORY: The property is platted as Lot 2, Block 1, Mediterranean Plaza Commercial Second Addition, recorded September 27, 1988. DP-111 originally was approved November 3, 1981, as Woodlawn Development No. 15. Amendment #1, approved March 17, 1987, configured the CUP with one large lot. Amendment #2, approved August 29, 1996, transferred a parcel from DP-194 to DP-111 and amended outdoor storage and parking for a Wal-Mart expansion. Amendment #3, to transfer more of DP-194 for expansion of the theater, was denied. Amendment #4, approved April 27, 2000, allowed more outdoor storage for Wal-Mart. Amendment #5, approved April 24, 2003, allowed the creation of

Parcel 1A as a separate parcel and set maximum building coverage at 73,002 square feet and reduced the building setback from 75 to 50 feet along 32nd Street North. Since Amendment #5, two administrative adjustments have increased building coverage per CUP adjustment provisions that allow up to a 10 percent increase of the overall CUP.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, GO	Office, commercial strip center, vacant
SOUTH:	LC	Bowling alley, Wal-Mart
EAST:	GC	Theater
WEST:	LC	Restaurants, retail, office

PUBLIC SERVICES: On the Functional Classification Plan, Rock Road is designated as a major arterial, and is developed as a six-lane arterial with decel lanes and left-turn lanes and with a striped median area (not raised curb protected) at the intersection of Rock Road and 32nd Street North. It is one of the most heavily traveled streets in Wichita, with traffic volumes in 2007 (ADTs) of 24,000 vehicles per day on Rock Road at the intersection of 29th Street North. Traffic counts on Rock Road were not available at 32nd Street North, but traffic counts for 32nd Street North at its point of intersection with Rock Road were 1,800 vehicles per day. A traffic signal is located at this intersection and travelers regularly use the private access way between the Dairy Queen and Parcel 1A connecting with 32nd Street North to avoid left-turn movements onto and from Rock Road.

Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “regional commercial.” This is in conformance with the proposed amendment. **Commercial Objective III.B** encourages future commercial areas to: “Develop future retail/commercial areas which complement existing commercial activities; provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” **Strategy III.B.2** seeks to integrate out parcels to planned centers through shared internal circulation, shared signage, similar landscaping and building materials, and combined ingress/egress locations. The CUP generally conforms to these guidelines.

RECOMMENDATION: Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED for Amendment #6 subject to the following conditions:

1. A site plan shall be required to be submitted and approved prior to the issuance of any future building permits on Parcel 1A and/or Parcel 1B by the Director of Planning; said site plan shall conform to the site plan approved by the Director of Planning July 6, 1987, and shall ensure the access easement generally running north-south approximately 225 feet east and parallel to Rock Road be protected to serve as a link between parcels for the free flow of vehicles by channelization and by prohibiting direct access of parking spaces onto this access easement.
2. No building permit shall be issued for any building that would exceed parking requirements of the Unified Zoning Code. If the site is inadequate to meet the parking requirements, a parking analysis to document compliance with UZC parking requirements shall be required prior to issuing any additional building permit(s). Evidence of compliance can include but is not limited to offsite parking agreements or shared parking agreements that meet UZC standards.
3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
4. 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.

5. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: DP-111 is fully developed except for a vacant portion of Parcel 1 (Lot 3, Block 1, Mediterranean Plaza Commercial Second Addition) held in different ownership from Parcel 1A and located to the northeast of the application area. Other uses on DP-111, all on property zoned LC, include the Dairy Queen to the west, three strip center buildings with several restaurants, retail including a Petco, and office tenants to the southwest, a bowling alley to the south, and a Wal-Mart on the next parcel to the south. The 14-screen movie theater is located on the adjoining CUP to the southeast. The property to the north of 32nd Street North, zoned LC and GO, includes another strip commercial building and a large office building.
2. The suitability of the subject property for the uses to which it has been restricted: The area is suitable for the use as currently zoned; this amendment represents an intensification of the types of uses already permitted on the same zoning district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The main concerns are to ensure the access and cross-lot circulation is maintained to protect the interests of all property owners within the CUP and that the parking provided amply meets the needs, to avoid detrimental impacts on the other uses within the CUP.
4. Length of time the subject property has remained vacant as zoned: The Northrock 6 Cinema has been closed for three to four years.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "regional commercial." This is in conformance with the proposed amendment. **Commercial Objective III.B** encourages future commercial areas to: "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses." **Strategy III.B.2** seeks to integrate out parcels to planned centers through shared internal circulation, shared signage, similar landscaping and building materials, and combined ingress/egress locations. The CUP generally conforms to these guidelines.
6. Impact of the proposed development on community facilities: The requested amendment will increase traffic on 32nd Street North feeding into Rock Road. The signalization at 32nd and Rock should accommodate this increase.

DONNA GOLTRY, Planning Staff presented the staff report.

Responding to a question from **FOSTER** regarding the appropriateness of the building height, **GOLTRY** said going from 45 feet to 60 feet was appropriate in this commercial area because there were other taller buildings located near the site. She added that the site was not adjacent to residential zoning where there would be an impact.

Responding to a question from **GISICK** concerning the origin of the request, **GOLTRY** explained that the applicant is converting the office structure and carving out another parcel which will result in more

building area within the two parcels combined. She said going from 85,000 square feet to 100,000 square feet is more of an increase in gross floor area than is allowed by an administrative adjustment.

MITCHELL said he didn't see anything in the conditions in the staff report about changing the shape of the drive aisle exit.

GOLTRY commented that there have been concerns raised about the traffic circulation within the development and that it is difficult to turn into and out of the private drive onto 32nd Street North. There have been discussions on how to improve the geometrics of the exit with the Public Works Traffic Engineering.

GREG ALLISON, MKEC, AGENT FOR THE APPLICANT said they understand the issue with the site plan as well as the parking and are prepared to address them. He offered to answer any questions.

DON CHESSER, 349 NORTH MISSION ROAD said he is the owner of the Dairy Queen property. He said no one would be here if the private agreements entered into on December 28, 1989 were made part of the CUP. He said both agreements (covering a term of 60 years) were recorded with Sedgwick County and covered issues such as the "common areas," unimpeded access from 32nd Street to all parcels in the area, and parking. He mentioned the amendment to the CUP in 2007. He mentioned the bend and jog in the drive, which he believes is a problem. He said although the properties have changed hands since the agreements were executed, they flow with the property. He mentioned that much of this proposal has not been disclosed to the other property owners, but he saw the plans and questioned them. He said being granted a lot split does not give the applicant the right to sell the properties separately and it also does not change parking requirements. He said the proposed three-story office building will be short 120 parking stalls and parking for the proposed retail center will encroach upon the common area. He said he has attended several meetings and that he has never gotten a clear answer about parking or about what the developer is going to do in the area in the future. He said none of the property owners are willing to amend the original agreements.

Responding to a question from **FOSTER** concerning the parking issue, **CHESSER** said only 207 spaces will be available after the lot is split, which means both parcels will be short of parking as required by City Code. He also mentioned that trucks are tearing up the landscaping and curb at 32nd Street to get out onto Rock Road from Wal-Mart because of the way the road is configured.

HILLMAN asked **MR. CHESSER** if he could recommend any solutions.

CHESSER suggested not allowing the lot split and requiring the applicant to develop the property he has.

TAPE 1, SIDE 2

ALLISON stated that a site plan has been submitted to the City and that the proposed parking does not encroach onto any access way, which was never their intention. He said they are negotiating an agreement to obtain additional parking stalls on adjacent properties. He said they understand that they must provide enough parking stalls in order to be issued a building permit. He said this shopping district is currently undergoing changes as far as redevelopment. He mentioned that the North Rock 6 hasn't been there for a while. He commented that as the property is redeveloped and the building uses change, the parking analysis and diagram will change with it.

MCKAY asked about the possibility of deferring the case until the agent/applicant/owner get the parking agreement worked out? He said as far the building permit, the MAPC doesn't know anything about that.

ALLISON said they would prefer not to defer the CUP request and added that parking shouldn't be an issue.

Responding to a question from **DOWNING, ALLISON** said there were parking stalls in excess of 125. There was considerable discussion concerning available parking versus City Code requirements.

GISICK said he had reviewed the agreements entered into on December 28, 1989. He asked if they felt their current plan is keeping within the plans of those documents.

ALLISON said yes, they feel like they are in compliance with the parking requirements.

CHESSER commented that according to the 1989 agreement, paragraph 10, "...each owner shall maintain and preserve a sufficient number of parking stalls within their respective parcels in order to comply with applicable City of Wichita Parking Codes ..." He said with the proposed lot split, there is no way the applicant can provide sufficient parking within their parcel.

MICHAEL MONTEFERRANTE, 300 NORTH MAIN, APPLICANT commented that during project development they had a discussion with the neighborhood on what they were planning on doing. He explained that they planned on widening the drive to a minimum of 40 feet wide, the same as 32nd Street itself. He said they plan on adhering to all City Codes during development, not just parking. He said he had three letters from surrounding property owners who were very supportive of the proposed retail complex.

TOM MACK, DEVLIN REALTY, 1313 NORTH WEBB ROAD said he has an undeveloped parcel in the CUP. He said at the time the CUP was amended in 2007, he confirmed with City staff that the additional increase in square footage would not negatively affect their area. He said wanted to make sure that any increases in square footage not take away from their undeveloped parcel.

GOLTRY commented that this is an amendment to increase the amount of gross floor area within the CUP and would not limit **MR. MACK's** square footage on his parcel.

MCKAY commented that there were enough "loose ends" with the application that he was opposed to it.

MOTION: To defer the application.

MCKAY moved, **HILLMAN** seconded the motion, and it carried (10-4).
JOHNSON, MARNELL, SHERMAN and **VAN FLEET** – No.

MARNELL stated that he was opposed to the motion because private covenants fall under the preview of the court system, not a public body such as the MAPC. He said the application should be evaluated based on the merits of the case.

SUBSTITUTE MOTION: To approve subject to staff recommendation.

MARNELL moved, **SHERMAN** seconded the motion, and it failed (5-9). **DENNIS, DOWNING, FOSTER, HENTZEN, HILLMAN, GISICK, MCKAY, MILLER STEVENS, MITCHELL** – No.

SHERMAN asked if off site parking and shared parking happened during the normal course of business and if there was a mechanism in the plan to prevent parking from being overbuilt.

GOLTRY responded that offsite and shared parking are part of the normal course of business per the Unified Zoning Code (UZC); however, it does not seem to conform to the language in the private agreements. She said if everything is followed according to staff recommendation it will be in compliance with the UCZ parking requirements, but not necessarily the private agreements.

HENTZEN said he was opposed to the substitute motion and was in favor of the original motion to defer.

HILLMAN clarified that the number of parking spots is dependent upon the type and kind of actual utilization of the parcel. He asked about parking related to the additional space being used as offices.

GOLTRY said offices are rated at four parking spaces per 1,000 feet gross leasable area. She said if the establishment is a restaurant, parking requirements increase.

DIRECTOR SCHLEGEL asked if there was a time certain on the request for deferral.

MCKAY responded until they get everything worked out.

MARNELL said he will continue to oppose the deferral because the MAPC does not have the jurisdiction or legal grounds to impose a private agreement upon the applicant. He said the MAPC does not enforce private covenants.

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8. **Case No.: CUP2008-09** – Gateway Center, LLC (Owner); Professional Engineering Consultants, P.A., c/o Rob Hartman (Agent) Request DP-239 Amendment #5 to The Gateway Center to create Parcel 12-D, increase height from 35 to 60 feet on Parcel 12-D, and adjust parking requirements.

A PORTION OF LOT 12, BLOCK 1, THE GATEWAY CENTER 2ND ADDITION, AN ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 12, BLOCK 1; THENCE BEARING N01°03'27"W, ALONG THE WEST LINE OF SAID LOT 12, A DISTANCE OF 427.00 FEET; THENCE BEARING N89°06'02"E, A DISTANCE OF 206.59 FEET TO THE P.C. OF A CURVE TO THE LEFT; THENCE ALONG SAID CURVE HAVING A RADIUS OF 487.24 FEET, THROUGH A CENTRAL ANGLE OF 18°05'48", AN ARC DISTANCE OF 153.89 FEET; THENCE BEARING S01°03'27"E, A DISTANCE OF 451.10 FEET TO THE SOUTH LINE OF SAID LOT 12, BLOCK 1; THENCE BEARING S89°06'02"W, ALONG THE SAID SOUTH LINE, A DISTANCE OF 358.00 FEET TO THE POINT OF BEGINNING.
Generally located East of Greenwich Road and south of 13th Street North.

BACKGROUND: The applicant proposes to amend DP-239 Gateway Center Community Unit Plan ("CUP") to create Parcel 12-D, increase the maximum building height on that parcel from 35 to 60 feet, and adjust the parking requirement on Parcel 12-D to permit a hotel. The parking requirement would be the same as the code required one space per hotel room, but would differ with the code by requiring only 10 additional spaces for offices and common areas, whereas the code would require one additional space per 250 square feet of retail, professional services, offices, meeting rooms and recreational spaces. The proposed maximum building coverage for Parcel 12-D is 30%. The proposed maximum gross floor area is 70,000 square feet. Proposed land uses and signage controls for Parcel 12-D are no different than those previously existing for Parcel 12-C and the existing CUP, with a monument sign not to exceed 20 feet in height or 48 square feet in area, and spaced 150 feet from other signs. The CUP prohibits metal as a predominant exterior material, and requires consistent lighting fixtures, monument signs and landscaping throughout the CUP. The CUP building setback from the abutting residential zoning located to the south is 35 feet.

The CUP consists of 60 acres of LC Limited Commercial ("LC") zoned property on the southeast corner of Greenwich and 13th Street North. The applicant owns all of Parcel 12-C, from which the proposed Parcel 12-D is created. Most outparcels with street frontage in this CUP, Parcels 1 through 11-B, are vacant or developed with restaurants. All existing Parcels, except for Parcel 1, have a 35-foot height limit. Parcel 1, immediately west of the site, has a 48-foot height limit, and is developed with a four-story

hotel. Parcel 12-B, east of this site, is developed with a bowling alley, and Parcel 12-A, further east, is developed with a multi-screen cinema. South of this site, outside the CUP, are TF-3 Two-family Residential (“TF-3”) and SF-5 Single-family Residential (“SF-5”) zoned duplexes and single-family residences.

CASE HISTORY: The property is platted as a portion of Lot 12, Block 1, The Gateway Center 2nd Addition, recorded in 2005. The CUP was originally approved in 2000, with four amendments to date.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, CUP	Vacant commercial, restaurants
SOUTH:	TF-3, SF-5	Single and two-family residential
EAST:	LC, CUP	Bowling alley, cinema
WEST:	LC, CUP	Hotel

PUBLIC SERVICES: This portion of Greenwich is a four-lane paved arterial with a 60-foot half-width right-of-way, meeting the Access Management standards. The 2030 Transportation Plan designates this portion of Greenwich to remain a four-lane arterial. Traffic counts on this portion of Greenwich are 10,625 vehicles per day. Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “regional commercial.” Commercial Objective III.B of the Comprehensive Plan encourages future commercial areas to: “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.”

The Unified Zoning Code (“UZC”) height limit in the LC zoning district is 80 feet, plus two feet of height for every additional foot of setback beyond the minimum required setbacks. The UZC height compatibility standards would require that a 60-foot building on this site be set back from the residential zoning at the south property line by 125 feet.

RECOMMENDATION: Increasing allowable building height at this location without an appropriate building setback and other mitigations could have a negative effect on residential properties abutting this site to the south. This CUP already has a four-story hotel west of this site, also abutting residences. That hotel is mitigated with the CUP Development Guideline #21a., which limits Parcel 1 light poles to 14 feet within 75 feet of the south property line, requires downward shields on building lighting, and prohibits building signage on the south façade. Staff feels that the same standards should apply to the proposed Parcel 12-D with a 60 foot maximum building height.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to replatting or lot split within one year, and the following conditions:

APPROVE Amendment #5 to DP-239, subject to the following conditions:

1. Development Guideline #21a. shall be revised to include Parcel 1 and Parcel 12-D.
2. The CUP parcel description of Parcel 12-D shall state a maximum building height of 60 feet, with the addition that “the Wichita/Sedgwick County Unified Zoning Code height compatibility standards shall be met.”
3. 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.

4. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: DP 239 consists of 60 acres of LC zoned property on the southeast corner of Greenwich and 13th Street North. Most street fronting outparcels of this CUP, Parcels 1 through 11-B, are vacant or developed with restaurants. Parcel 1, immediately west of the site, has a 48-foot height limit, and is developed with a four-story hotel. Parcel 12-B, east of this site, is developed with a bowling alley, and Parcel 12-A, further east, is developed with a multi-screen cinema. South of this site, outside the CUP, are TF-3 Two-family Residential (“TF-3”) and SF-5 Single-family Residential (“SF-5”) zoned duplexes and single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The area is suitable for the uses permitted under LC zoning and DP-239.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed increased height on this site could have a negative effect on residential properties to the south. Compatibility setback requirements and proposed CUP lighting and signage restrictions should mitigate any potential negative effect. The proposed parking requirement reduction could have a negative effect on surrounding property owners within the same CUP.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “regional commercial.” Commercial Objective III.B of the Comprehensive Plan encourages future commercial areas to: “Develop future retail/commercial areas which complement existing commercial activities; provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.”
5. Impact of the proposed development on community facilities: The requested increase in building height could result in more traffic on Greenwich due to the increased maximum gross floor area. The site already has access to a well-developed arterial street with accel/decel lanes and left-turn center lanes; community facilities should be adequate.

JESS MCNEELY, Planning Staff presented the staff report.

Responding to a question from **FOSTER** concerning the height and set back relative to adjacent residential, **MCNEELY** commented that compatibility set backs are on a sliding scale, but the set back needs to be at least 125 feet from residential zoning. He said the applicant would also like to amend the CUP to permit a 60 foot building height, but if the building permit was for less than 60 feet, then the compatibility set back would be reduced comparably.

ROB HARTMAN, PEC, AGENT FOR APPLICANT said they are requesting 60 feet and not 48 feet in height because they want a taller hotel. He said the building will be 200 feet from the south property line adjacent to the residential area. He concluded by saying that they were in agreement with staff comments.

Responding to a request for clarification on the number of feet the building would be located from the south property line by **FOSTER**, **HARTMAN** said approximately 190 feet.

HILLMAN asked about the height of the hotel to the west of the site?

MCNEELY said that existing hotel was four stories (48 feet high) and that there would be no change to that.

MOTION: To approve subject to staff recommendation.

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

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9. **Case No.: CON2008-06** – New Western LC c/o Lindy Andeel (Owner), Art Stanfill (Agent) RequestSpecial Review for an off-site billboard sign located within 300 feet of residential zoning to increase the height of an off-site sign from 45 to 53 feet on property described as:

That part of Lot 1, New Western 4th Addition, Wichita, Sedgwick County, Kansas, described as: Beginning at the Northeast corner of said Lot 1; thence S 00 degrees 01'00" E along the East line of said Lot 1, 184.89 feet; thence S 89 degrees 58'49" W along the South line of a 30 foot drainage and utility easement in said Lot 1, 224.06 feet; thence N 00 degrees 00'00" parallel to the Northernmost tangent portion of the West line of said Lot 1, 184.97 feet to a point on the North line of said Lot 1, 92 feet East of the Northwest corner thereof; thence S 90 degrees 00'00" E along the North line of said Lot 1, 224 feet to the point of beginning. Generally located south of Kellogg Drive and west of Beverly (5325 E Kellogg Drive).

BACKGROUND: The applicant's off-site advertising billboard sign is a legal non-conforming billboard because it is 140 feet from residential zoning and residences southeast of the site, whereas the sign code requires a 300-foot separation from billboards to residential zoning and residences. The billboard is also legal non-conforming as it is currently 45 feet tall, and the sign code would limit this sign to 36 feet in height. The billboard is a 14 by 48 foot, or 672 square foot off-site advertising sign mounted above a commercial building (see the attached site plan and elevation provided by the agent). The two sided (east and west facing) billboard is located on the south side of East Kellogg Drive, west of Beverly. This site is along the East Kellogg Expressway frontage between the Oliver Street overpass and the Edgemoor overpass.

The applicant recently sought and received a Sign Code Administrative Adjustment to change the west facing sign face to an electronic message board, or LED sign. To alter a legal non-conforming sign, the non-conformity must be reduced. The applicant reduced the sign by eliminating skirting below the sign. The Sign Code allows administrative adjustments to raise signs above elevated highways; however, this portion of Kellogg is not elevated but rather at grade.

The applicant now wishes to raise this legal non-conforming sign from 45 to 53 feet, requiring this special review by the MAPC. The Sign Code section 24.04.225(a) states that *"An application for a permit for installation of a new or enlarged (size or height) off-site billboard sign located closer to a residentially-zoned lot or use than allowed by Section 24.04.222.4d of this code (300 feet) shall require a public hearing and approval by the Planning Commission or, if forwarded to the Wichita City Council for final action, shall require approval by the Wichita City Council."*

North of this site is the Kellogg Drive frontage road, and the Kellogg Freeway. North of Kellogg is the GO General Office ("GO") zoned Veterans Administration Hospital. West of the VA Hospital are TF-3 Two-family Residential ("TF-3") zoned single-family residences; east of the VA is an LC Limited Commercial ("LC") zoned retail store. South of this site is an LC zoned restaurant under the same ownership as the applicant, and MF-29 Multi-family Residential ("MF-29") zoned single and two-family residences. East of the site are LC zoned offices and automobile repair, and TF-3 zoned single and two-family residences. West of the site is an LC zoned hotel and restaurant under the same ownership as the

application area, an LC zoned office, and MF-29 zoned single-family residences. The nearest other billboard is 390 feet west of this site.

CASE HISTORY: The site was replatted as a portion of the New Western 4th Addition in 1995. The existing billboard was in place prior to the 2004 Sign Code amendments, which set the 300 foot minimum spacing between billboards and residences.

ADJACENT ZONING AND LAND USE:

NORTH:	GO, TF-3, LC	VA Hospital, retail, single-family residences
SOUTH:	LC, MF-29	Restaurant, two and single-family residences
EAST:	LC, TF-3	Office, auto repair, two and single-family residences
WEST:	LC, MF-29	Hotel, restaurant, office, single-family residences

PUBLIC SERVICES: The site has access from the Kellogg Drive service road, and Beverly, a local/residential street.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Regional Commercial.” Commercial Objective III.B of the Comprehensive Plan encourages commercial areas to: “Develop future retail/commercial areas which complement existing commercial activities provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.”

The 2004 updates to the Sign Code regarding billboard off-site signs were adopted with the objective of preventing billboards within 300 feet of residences, and with the objective of preventing the increase in size or height of legal non-conforming billboards within 300 feet of residences.

RECOMMENDATION: The sign code states that the purpose of the community’s sign regulations are: to eliminate potential hazards to motorists and pedestrian; to encourage signs, which by their location and design, are harmonious to their surroundings; eliminate excessive and confusing sign displays; provide a reasonable balance between the need of the sign and outdoor advertising industries while improving and preserving the visual qualities of the community and to promote health, safety and general welfare. This sign is located along an expressway signed for 60 mile per hour speeds.

Staff analysis concluded the following: The existing billboard is visible from eastbound Kellogg east of the Oliver overpass. The existing billboard is visible from westbound Kellogg, east of the Edgemoor overpass, and west of the Edgemoor overpass. The billboard is visible from the north/south oriented Oliver and Edgemoor overpass bridges. An on-site sign for the Wichita Inn may partially obscure this sign from eastbound traffic; however, the hotel sign is on the applicant’s site, and could be adjusted to improve visibility of the billboard.

Staff does not see from the information available that an increase in height of eight feet would improve visibility of this sign. Nearby residences, particularly those 140 feet southeast of the site, would be subjected to an increased visual effect from this billboard if the sign height increased by eight feet. Without information from the applicant demonstrating their need for increased sign height, and weighing the increased negative visual effect on the residents the code is intended to protect, staff does not find that the request can be supported.

Based upon information available prior to the public hearings, planning staff recommends that the request be **DENIED**.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of this site are the Kellogg Drive frontage road, and the Kellogg Freeway. North of Kellogg is the GO zoned Veterans Administration Hospital. West of the VA Hospital are TF-3 zoned single-family residences; east of the VA is an LC zoned retail store. South of this site is an LC zoned restaurant under the same ownership as the applicant, and MF-29 zoned single and two-family residences. East of the site are LC zoned offices and automobile repair, and TF-3 zoned single and two-family residences. West of the site is an LC zoned hotel and restaurant under the same ownership as the application area, an LC zoned office and MF-29 zoned single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The existing billboard off-site sign has legal non-conforming use rights at the current height. The existing height exceeds what the Sign Code would permit today, and appears to function adequately for the applicant.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request would allow the legal non-conforming billboard to increase in height from 45 to 53 feet, further visually affecting nearby residences.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Regional Commercial.” Commercial Objective III.B of the Comprehensive Plan encourages commercial areas to: “Develop future retail/commercial areas which complement existing commercial activities; provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” The 2004 updates to the Sign Code regarding billboard off-site signs are intended to protect surrounding land uses, particularly residences, from the negative visual effects of billboards. The City Council adopted the Sign Code with the objective of preventing billboards within 300 feet of residences, and with the objective of preventing the increase in size or height of legal non-conforming billboards within 300 feet of residences.
5. Impact of the proposed development on community facilities: Traffic on Kellogg Drive and Beverly should not be affected by any changes to the existing billboard.

JESS MCNEELY, Planning Staff presented the staff report. He said this was the first time the special review process has been used.

He referred MAPC members to two handouts, one of which was a memo updating the sign code and the other, an e-mail from a neighbor opposed to the increase in the billboard height.

SHERMAN mentioned for the record that he had received contact about the case.

VAN FLEET asked for clarification about the “off-site billboard sign” designation, since they are advertising their own wares and the sign is located in their parking lot.

MCNEELY explained that the Office of Central Inspection assigned that classification.

MITCHELL commented that geometrically speaking, raising the sign will increase the distance from residential property.

MCNEELY said according to the sign code, considering an increase in the size or height of the sign is considered an increase in non-conformity.

MITCHELL commented that he also had ex parte contact on this item.

There was considerable discussion concerning views of the sign from various eastbound and westbound locations along Kellogg.

TAPE 2, SIDE 1

ART STANFILL, 4031 E. HARRY, AGENT FOR THE APPLICANT provided MAPC members handouts which were fourteen pictures at various locations along eastbound and westbound Kellogg. He said there have been cases where the City has allowed height adjustments taller than allowed by City Code. He briefly reviewed each picture and explained the location. He mentioned that the sign elevation was “at grade” and commented that before the Kellogg improvement came along, the sign was viewable from a number of locations. He said they would like to increase the height of the sign from between 8-14 feet, preferably 14 feet, which would make the sign a lot viewable from the east. He added that he noticed the application said 8 foot on the agenda.

MILLER STEVENS clarified that the reason this was before the MAPC was the relationship of the sign to the residential area. She asked what the other issues were.

MCNEELY said height was also an issue because the sign code limits signs to 36 feet in height, and this sign is currently 45 feet tall, which makes it “legally non-conforming” as it is.

Responding to a question from **SHERMAN** concerning whether the sign was up prior to Kellogg improvements, **MCNEELY** said, yes, the sign was constructed prior to the Kellogg improvements.

GISICK commented on the monument sign at Tyler and Kellogg and how that was allowed to be raised because of the overpass. He asked if anyone has had a sign raised because of an underpass. He commented that personally he didn’t like these types of signs. He mentioned how the sign code addressed adjustments and how it could get out of hand if this sign is raised then everyone else’s sign needs to be raised because this sign is blocking that sign, etc, etc.

MCNEELY responded that there was no precedent that he was aware of. He said the sign code does not address raising signs due to underpasses.

MILLER STEVENS said since the sign is currently “non-conforming” in relation to the residential neighborhood, why should the MAPC make it *more* non-conforming? She said she did not feel the MAPC should promote further non-conformance where the residential neighborhood bears the negative effect.

DIRECTOR SCHLEGEL commented that the application was for 8 feet and that the legal notices to the neighborhood and advertised in the newspaper stated 8 foot. He requested clarification from **MR. STANFILL**.

STANFILL apologized and stated that they had originally applied for a variance that was changed at some later date. He commented that it appeared that Lindy Andeel, the property owner, had signed an application that stated eight feet.

DIRECTOR SCHLEGEL clarified that since the agent wanted 14 feet, they would need to go through the process and public notification again.

MITCHELL suggested a deferral until a new application is submitted.

There was brief discussion whether it was a “deferral” or a “re-application”.

MOTION: To withdraw the current application per the applicant’s request.

ANDERSON moved, **DOWNING** seconded the motion, and it carried (14-0).

Responding to a question from **GISICK** regarding a cooling down period prior to re-applying, **DIRECTOR SCHLEGEL** said unlike a zoning request, there is no provision in the sign code for a delay and that the applicant can come back in immediately with a new application.

10. Case No.: DER2008-01 - Request Public Hearing on the 47th-55th Street South Joint Area Plan, 2008-2030.

Background: In mid-2007, the City of Derby, the City of Wichita and Sedgwick County jointly agreed to develop a tri-jurisdictional land use plan for the unincorporated area located between 47th and 55th Street South, and K-15 to 159th Street East. It was determined that a plan with a 2030 planning horizon was needed to address issues related to the possible future extension of urban water and sewer services into portions of the plan area, and coordinate the long term 2030 urban growth areas for the cities of Derby and Wichita.

A joint Plan Steering and Technical Advisory Committee advised and directed the development of this plan. The Committee also discussed the appropriateness of modifications to the 2030 growth areas for Derby and Wichita, and the current water agreement between Derby and Wichita.

The plan contains an ‘existing conditions’ analysis of natural features, land uses and services, zoning and land use policies affecting the plan area, as well as projections of future population and employment growth to the year 2030. The plan proposes an anticipated / desired future land use concept that reflects the efficient, future extension of various urban municipal services into portions of the plan area.

Analysis: The overall plan concepts are as follows:

1) Future Land Use Concept

Based on research and Steering Committee and Technical Advisory Committee discussions, a Future Land Use Concept has been developed for the Plan Area that largely reflects the Future Land Use Map within the 2006 Derby Comprehensive Plan, and is consistent with the Wichita-Sedgwick County 2030 Functional Land Use Guide. The Future Land Use Concept developed for the Plan Area is a compilation of population and employment projections, existing and desired future land use patterns, future service area potential, implementation of a series of recommendations of the McConnell AFB Joint Land Use Study, and other current trends.

2) Existing Water Agreement between Wichita and Derby

It is proposed that the existing water agreement between the City of Wichita and the City of Derby not be modified at this time, and the Plan Area remain within the City of Wichita’s water servicing area. The draft plan recommends that the City of Derby and the City of Wichita should continue to work together by allowing some flexibility in the agreement for situations/cases that arise in which the water agreement boundaries may need to be modified for economic and efficiency purposes.

3) 2030 Urban Growth Area

The City of Derby 2006 Comprehensive Plan identifies a portion of the Plan Area (along Rock Road) as a part of the Derby 2030 Growth Area, while at the same time the Wichita-Sedgwick County Comprehensive Plan includes a portion of the Plan Area within the City of Wichita’s 2030 Urban Growth Area, from K-15 to just east of Greenwich Road. The 47th-55th Street South Joint Land Use Plan does not resolve future growth area/annexation issues. It is recommended that annexation continue to occur as the market demands.

4) Zoning Area of Influence

The City of Derby's Zoning Area of Influence currently covers the majority of the Plan Area from K-15 to 127th Street. The *47th-55th Street South Joint Land Use Plan, 2008-2030* does not propose changes to Derby's Zoning Area of Influence.

5) Tri-Jurisdictional Task Force

The plan recommends that the Managers of the City of Wichita, the City of Derby and Sedgwick County create a Tri-Jurisdictional Task Force to continue efforts to coordinate the future growth and servicing issues that may develop over time. The Task Force would meet once a year, (or more often as needed) and would consist of one person from each jurisdiction that is familiar with these issues. Although this Plan provides land use guidance, there are some unresolved issues that the Committee felt that it was too early to make further decisions.

The *47th-55th Street South Joint Area Plan, 2008-2030* outlines formal policy, which is proposed to be jointly adopted by Sedgwick County, and the Cities of Derby and Wichita as elements of their respective comprehensive plans. The plan has been reviewed by the Advanced Plans Committee on January 10, 2008, by the Derby Planning Commission on January 3, 2008 and by the Wichita-Sedgwick County Metropolitan Area Planning Commission on February 21, 2008. In addition, property owners within the Plan Area were invited to an informal Open House, held January 28, 2008, that provided information regarding the plan concepts and provided property owners an opportunity to submit comments or concerns. Approximately 43 property owners attended the Open House. The plan has been updated and is ready for adoption.

Recommended Action: That the MAPC pass a resolution adopting the *47th-55th Street South Joint Area Plan, 2008-2030*, as an element of the Wichita-Sedgwick County Comprehensive Plan.

Attachments:

47th-55th Street South Joint Area Plan, 2008-2030.

CHRISTY RODRIGUEZ, Planning staff presented the staff report.

MCKAY asked if this was the same document that was submitted to the MAPC previously.

RODRIGUEZ reported that there was a minor update which was a correction of a technical error.

MOTION: To approve subject to staff recommendation, which was to pass a resolution adopting the *47th – 55th Street South Joint Area Plan, 2008-2030* as an element of the Wichita-Sedgwick County Comprehensive Plan.

ANDERSON moved, **SHERMAN** seconded the motion, and it carried (14-0).

DOWNING commended **RODRIGUEZ** for her efforts on the project, especially behind the scenes and for bearing the brunt of some rather contentious meetings.

The Metropolitan Area Planning Department informally adjourned at 3:35 p.m.

State of Kansas)
Sedgwick County)^{ss}

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

Given under my hand and official seal this _____ day of _____, 2008.

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

(SEAL)