

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

November 20, 2008

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, November 20, 2008, at 1:35 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Don Anderson; David Dennis; David Foster; Bud Hentzen; Hoyt Hillman; Ronald Marnell; John W. McKay, Jr. and Don Sherman. Darrell Downing; Michael Gisick; Bill Johnson; Debra Miller Stevens; M.S. Mitchell and G. Nelson Van Fleet were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Scott Wadle, Senior Planner and Maryann Crockett, Recording Secretary.

DIRECTOR SCHLEGEL opened the meeting by stating that the Commission needed to elect a temporary Chair for the meeting.

MOTION: To elect **RON MARNELL** as temporary Chair.

MCKAY moved, **HILLMAN** seconded the motion, and it carried (8-0).

RON MARNELL in the Chair.

1. Approval of the November 6, 2008, MAPC meeting minutes:

MOTION: To approve the November 6, 2008, Minutes.

HILLMAN moved, **HENTZEN** seconded the motion, and it carried (8-0).

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

2-1. **SUB 2008-82: One-Step Final Plat – FLIGHT SAFETY 2ND ADDITION**, located on the west side of Greenwich Road and south of 13th Street North.

NOTE: This site is located in the County adjoining Wichita's city limits. The property will not be annexed due to an agreement between the owner and City of Wichita.

STAFF COMMENTS:

- A. Water Utilities Department has required the applicant to guarantee the extension of water for fire protection. The main extension will eliminate fees in lieu of assessment for the water main. A guarantee is needed for sewer. Fees in lieu of assessment are needed for sewer main.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. County Engineering has approved the drainage plan. A final copy with seal and signature is needed. City Engineering requests a copy of the drainage plan.

- D. County Surveying notes that the dimension on the east line of Lot 1 needs to be corrected.
- E. County Surveying notes that the dimension on the south line of Reserve A needs to be corrected.
- F. Traffic Engineering has approved the access controls. The plat proposes two openings along Greenwich.
- G. The plat includes a 10-foot right-of-way dedication. The plat's text shall note the dedication of the streets to and for the use of the public.
- H. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineer (ASACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. GIS has requested "Greenwich Rd" denoted on the plat.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

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

MCKAY moved, **SHERMAN** seconded the motion, and it carried (8-0).

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- 2-2. **SUB 2008-88: One-Step Final Plat -- SUMMIT CROSSING ADDITION**, located east of 127th Street East and 21st Street North.

NOTE: This is a replat of the Lakeside Acres 2nd Addition. The applicant requests a zone change (ZON 2008-62) from SF-5 Single-family Residential to LC Limited Commercial (Lots 1-7, Block 1, Lots 1 and 2, Block 2) and NR Neighborhood Retail (Lots 3 and 4, Block 2). The applicant also proposes the Summit Crossing Community Unit Plan (CUP 2008-45, DP-317).

STAFF COMMENTS:

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being scheduled for City Council, the zone change will need to be approved.
- B. Wichita Water Utilities Department advises that all lots have access to water. A guarantee is needed to extend sewer (mains and laterals) to serve all lots being platted.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. City Engineering has approved the drainage plan subject to the detention facility being included within a reserve and the platting of additional drainage easements.
- E. The plat proposes one street opening along 127th St. and four access openings. One joint access opening along 21st St. North is proposed. Traffic Engineering has approved a rights-in/out opening for the first opening from the intersection along both arterials. Other openings along 127th St. East need to line up with openings platted for Reed Commercial Addition.
- F. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure

internal vehicular movement between the lots.

- G. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- H. The applicant shall submit a covenant that provides four (4) off-street parking spaces per lot that abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- I. The Applicant shall guarantee the paving of the proposed street.
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of the Summit Crossing Community Unit Plan (CUP 2008-62, DP-317).
- M. The plat needs to show adjacent property owners.
- N. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- O. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the appropriate governing body.
- P. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- Q. Conoco Pipeline Company requests that encroachment issues be resolved prior to City Council review.
- R. GIS requests that Churchill be replaced with Shadybrook St.
- S. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- T. The plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- U. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- BB. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

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

MCKAY moved, **FOSTER** seconded the motion, and it carried (8-0).

RE: SUB 2008-88 -- One-Step Final Plat of Summit Crossing Addition

On Thursday, November 20, 2008, the Metropolitan Area Planning Commission (MAPC) approved the one-step final plat as recommended by the Subdivision Committee, with the following revision to item "I."

"The Applicant shall guarantee the paving of the proposed street. The paving guarantee shall also provide for sidewalks along Shadybrook and Garnett."

2-3. SUB 2008-86: One-Step Final Plat -- LEDGESTONE ADDITION, located west of Seneca and north of Pawnee.

NOTE: This is an unplatted site located within the City. The site has been approved for a zone change (ZON 2008-51) from SF-5 Single-Family Residential to TF-3 Two-family Residential.

STAFF COMMENTS:

- A. Wichita Water Utilities Department advises that all lots have access to sewer and Lots 1 and 2 have access to water. A guarantee is needed to extend water to serve Lots 3 and 4.
- B. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being scheduled for City Council, the zone change will need to be approved by City Council.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. City Engineering has approved the applicant's drainage plan.
- E. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- F. County Surveying requests the center lines of streets on the north and south be labeled.
- G. "Reserves" shall be deleted from the plattor's text.
- H. The plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- P. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

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

MCKAY moved, SHERMAN seconded the motion, and it carried (8-0).

3. PUBLIC HEARING – VACATION ITEMS

3-1. VAC2008-34: City vacation of a portion of a platted drainage easement

OWNER/APPLICANT: David Shannon

AGENT: Baughman Company, P.A., c/o Phil Meyer

LEGAL DESCRIPTION: Generally described as the north 70-foot wide portion of the platted 170-foot wide drainage easement located along the south lot line of Lot 1, Casco Addition, Wichita, Sedgwick County, Kansas. (see attached legal and exhibit)

LOCATION: Generally located midway between Pawnee Avenue and Harry Street, south of May Street, on the west side of West Street (WCC #IV)

REASON FOR REQUEST: Additional space for development

CURRENT ZONING: Subject property and all adjacent and abutting properties are zoned LI Limited Industrial (“LI”).

The applicant is requesting consideration for the vacation of the described portion of the platted drainage easement. The GIS map shows a sewer line in the east portion of the subject platted easement, but it is protected by a sanitary sewer easement dedicated by separate instrument; Film 707, Page 640. The applicant has contacted the Storm Water Engineer, who is agreement with vacating an undefined portion of the subject easement, contingent on plans submitted to Storm Water for review and approval. No sewer, water or franchised utilities will be impacted by the proposed vacation. The Casco Addition was recorded with the Register of Deeds October 16, 1985.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time October 30, 2008, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted drainage easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted drainage easement described in the petition should be approved with conditions:
- (1) Vacate only that portion of the platted drainage easement as described in as approved by Storm Water.
 - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide City Storm Water and with all needed plans for review. Provide a guarantee for improvements and a temporary easement, both to be provided prior to proceeding to the Wichita City Council for final action.
 - (3) All improvements shall be according to City Standards and at the applicant's expense.
 - (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only that portion of the platted drainage easement as described in as approved by Storm Water.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide City Storm Water and with all needed plans for review. Provide a guarantee for improvements and a temporary easement, both to be provided prior to proceeding to the Wichita City Council for final action.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not

complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

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

HENTZEN moved, **MCKAY** seconded the motion, and it carried (8-0).

PUBLIC HEARINGS

4. **Case No.: ZON2008-58** - Wichita State University Foundation (owner/applicant); Director of Facilities Planning, Attn: John Gist (agent) Request County zone change from RR Rural Residential to U University on 20 acres on property described as:

The South 660 feet of the East 1,320 feet of the Southwest Quarter of Section 8, Township 29 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas except street right-of-way for 87th Street South; generally located N.E. of 87 St. S. and 295th St. West.

BACKGROUND: The applicant owns 20-acres of land located north and east of the intersection of South 295th Street West and West 87th Street South. Their property is located in an unincorporated part of Sedgwick County, approximately 4 to 5 miles northwest of Viola. The property is currently zoned RR Rural Residential (“RR”). The applicants are requesting U University (“U”) zoning on this site in order to develop a field station facility in support of Wichita State University’s, Department of Biological Sciences existing education and research activities on the land. As stated in the program statement accompanying the application, since 1983, the WSU Biological Sciences Department has been operating at this site, the Ninnescah Experimental Tract (NET), completing restoration projects that include the cessation of cropping and livestock activities and the control of brush in prairie, riparian and hedgerow portion of the site. The operation has also completed check dams along the stream running through the site in order to slow runoff to restore the original wetland. 195 acres of formerly cultivated land has been restored through the planting of native prairie species. Since 1986, nearly the entire budget for the NET has been provided through the USDA Conservation Reserve Program. The field station facility proposed for the site will be used as a research and education facility with laboratory facilities for sampling, taxonomic identification, storage, sample processing and data analysis.

All property surrounding the subject site is zoned RR and is used for agriculture. The land to the north and west is owned by Wichita State University, and is a part of the NET. Land to the south and to the east is currently in agriculture production. There is a farmstead located approximately 250 feet to the southwest and another farmstead located approximately 2,300 feet to the south and east.

CASE HISTORY: The application area is currently unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	WSU Research Area
SOUTH:	RR	Agricultural Land
EAST:	RR	Agricultural Land
WEST:	RR	WSU Research Area

PUBLIC SERVICES: At this location, West 87th Street South is a two-lane, unpaved Sedgwick County rural road. At this location, South 295th Street West is also a two-lane, unpaved Sedgwick County rural road. 295th Street West does not allow public traffic north of the intersection with 87th Street South. The 2030 Transportation Plan of the Wichita/Sedgwick County Comprehensive Plan indicates no change to

the current status of these roads. No projects exist in the CIP for these roads. There are no traffic counts at this intersection. City water and sewer are not available on the site. The site is outside any Rural Water districts.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts this site as a “rural area.” Rural areas encompass land outside the 2030 Urban Growth Areas predicted for Sedgwick County cities. It is intended that agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County, and predominately larger lot residential exurban subdivisions (with lot sizes of two acres or more) with provision for individual, or community water and sewer services are appropriate. This site is approximately ten miles southwest of the Wichita 2030 Urban Growth Area, and approximately four to five miles northwest of the Viola Urban Growth Area.

The Comprehensive Plan contains an objective that states that the County is to enhance and encourage agricultural activities within Sedgwick County, recognizing that viable agricultural land exists within the County.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** All property surrounding the subject site is zoned RR and is used for agriculture. The land to the north and west is property owned by Wichita State University and is a part of the NET. Land to the south and to the east is currently in agriculture production. There is a farmstead located approximately 250 feet to the southwest and another farmstead located approximately 2,300 feet to the south and east.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property is zoned RR and the purpose of this zone is to accommodate very large-lot, single-family residential development in areas where a full range of municipal facilities and services are not available and not likely to be available in the near future. The current zoning is not suitable for the use that has been occurring there or for the future use of the property as an experimental and research area/facility. Rezoning will allow for the development of a small building to accommodate education and research activities.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requirements of the Unified Zoning Code should help mitigate most of the detrimental impacts on surrounding properties.
4. **Conformance of the requested change to adopted or recognized Plans/Policies:** The 2030 Wichita Functional Land Use Guide map depicts this site as a “rural area.” Rural areas encompass land outside the 2030 Urban Growth Areas predicted for Sedgwick County cities. It is intended that agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County, and predominately larger lot residential exurban subdivisions (with lot sizes of two acres or more) with provision for individual, or community water and sewer services are appropriate. This site is located approximately ten miles southwest of the Wichita 2030 Urban Growth Area, and approximately four to five miles northwest of the Viola Urban Growth Area. The Comprehensive Plan contains an objective that states that the County is to enhance and encourage agricultural activities within Sedgwick County, recognizing that viable agricultural land exists within the County.
5. **Impact of the proposed development on community facilities:** The use of this property should have limited impact on surrounding properties and community facilities.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

SHERMAN moved, **HILLMAN** seconded the motion, and it carried (8-0).

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5. **Case No.: ZON2008-59 and CUP2008-43** - Greenwich Investments, LLC (Rob Ramseyer) / Baughman Company, P.A., (Phil Meyer) Request County zone change from RR Rural Residential to MF-18 Multi-family Residential and LC Limited Commercial and Creation of County CUP, North Greenwich Community Unit Plan on property described as:

The North Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT road right-of-way on the West and North.

TOGETHER WITH

The South Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT road right-of-way on the West; generally located east of Greenwich Road, approximately ¼- mile north of 29th Street North.

BACKGROUND: The applicant proposes the creation of the mixed-use North Greenwich Development Community Unit Plan (DP-316). The application area contains 30.23 unplatted undeveloped acres located on the east side of Greenwich Road, ¼-mile north of 29th Street North. The applicant also proposes to rezone the property from RR Rural Residential (“RR”) to MF-18 Multi-family Residential (“MF-18”) and LC Limited Commercial (“LC”). See the attached CUP document.

The proposed CUP contains two parcels, both approximately 15 acres in area. Parcel 1 has 960 feet of Greenwich Road frontage, and is proposed to be rezoned to LC. Proposed uses for Parcel 1 are all uses permitted in the LC district except the list of uses usually eliminated from CUPs: adult entertainment, sexually oriented businesses, night club in the city, night club in the county, etc. See General Provision 18 for the complete list of prohibited uses. With respect to signage, Parcel 1 is allocated three monument-type signs along Greenwich with each sign having a maximum area of 200 square feet with a maximum height of 20 feet.

Proposed Parcel 2 is located east of Parcel 1. Access to Parcel 2 is via a 40-foot wide opening on Greenwich Road located along the southern side of Parcel 1, and is proposed to be zoned MF-18. Proposed uses in Parcel 2 are all uses permitted in the MF-18 district; up to a maximum of 120 dwelling units; not to exceed eight dwelling units per acre. The attached concept plan “A” depicts a series of homes located around a circular roadway with two points of access – one tied directly to Greenwich along the southern property line with a second point of ingress and egress through Parcel 1 in the northern third of the parcel.

Building heights in both parcels are to be limited to 35 feet. The southern boundary of Parcel 1 is removed from the single-family residential lot located to the south by Parcel 2’s 40-foot wide access road. Parcel 1 has 35-foot building setbacks along the west and north parcel line, with 15-foot setbacks along the south and eastern parcel line. Parcel 2 has 35-foot building setbacks along the south, east and north parcel line, and a 15-foot setback along the western parcel line. With respect to signage, Parcel 2 is allocated one monument-type sign up to 200 square feet in area to be located in a reserve whose location is undetermined. Maximum sign height is 20 feet. All signs are to share similar architectural design elements; portable, billboards, off-site signs are prohibited; area of window signage is limited to 25 percent of window area and no signs shall face the rear of any building.

Access is proposed to be limited to two points along Greenwich. Parking lot lighting shall share consistent elements; limited to a maximum height of 24 feet. A landscape plan shall be submitted for approval. Commercial buildings shall be screened from adjacent residential uses by a six- to eight-foot concrete masonry wall. Rooftop mechanical equipment, loading docks and outdoor storage areas will be screened. Buildings within the CUP shall share similar architectural character, color and texture. Development of the site is prohibited until sewer and water services are extended to the site. Maximum floor area ratio is 35 percent or 478,420 square feet.

Surrounding properties are principally zoned RR; however there are tracts that are zoned SF-5 Single-family Residential (“SF-5”), SF-20 Single-family Residential (“SF-20”) and LI Limited Industrial (“LI”). Most surrounding property is used for agriculture; however there is a single-family residence located south of the application area. The LI zoned property located west of Greenwich is vacant. The SF-5 zoned property located behind of the LI zoned property located west of Greenwich is developed with City of Wichita sports fields.

Attached concept plan “B” depicts how the applicant’s larger ownership laying to the north and east might be developed with a residential subdivision.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential; agriculture
SOUTH: RR Rural Residential; single-family residence, agriculture
EAST: RR Rural Residential; agriculture
WEST: SF-20 Single-family Residential, LI Limited Industrial and SF-5 Single-family Residential; agriculture and sports fields

PUBLIC SERVICES: Greenwich Road is classified as a two-lane arterial. The City of Wichita city limits are located immediately southwest of the application area across Greenwich. Sewer and water service is located south of the site, on the west side of Greenwich. Water is located southwest of the application area; sewer is located at 29th and Greenwich. Needed improvements, if any, will be determined at the time of platting; however a guarantee for left-turn center lanes and right-turn decel-lanes at all full movement approaches will be requested.

CONFORMANCE TO PLANS/POLICIES: The site is located in Wichita’s 2030 Urban Growth Area. The 2030 Urban Growth Area identifies land located on Wichita’s urban fringe that is undeveloped, but has the potential to be developed by 2030. The land to the west of the application area is shown on the 2030 Wichita Functional Land Use Guide as an employment/industry center. Commercial Goal “B” says that it is important to develop future retail and commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses. Commercial location guideline 1 recommends that commercial sites should be located adjacent to arterial streets. Strategy III.B.3 seeks to reduce access points along arterial streets.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and the following conditions:

1. Approve the zone change (ZON2008-59) to LC for Parcel 1 and MF-18 for Parcel 2.
2. Approve the North Greenwich Development Community Unit Plan (DP-316), subject to the development standards contained therein, and the following conditions:
 - A. Needed improvements will be determined at the time of platting; however a guarantee for left-turn center lanes and right-turn decel-lanes at all full movement approaches will be requested.

- B. The ordinance/resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
- C. Prior to publishing the ordinance/resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-316) includes special conditions for development on the this property.
- D. If the site is developed with institutional, church, school or similar uses, sign size on parcels where such uses are located shall be limited to 100 square feet.
- E. 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: Neighboring properties are predominantly zoned RR Rural Residential; however there are properties zoned SF-5 Single-family Residential, SF-20 Single-family Residential and LI Limited Industrial. The predominant existing land use is agricultural; however there is a single-family farmstead and there are athletic fields nearby. This area is a transition area that is beginning to experience interest in converting the agricultural land to more intensive zoning and uses, and can expect development pressure to increase as time goes by.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned RR Rural Residential which allows primarily large-lot residential uses, and a few other public, civic and institutional uses. The site could be developed as zoned; however it is only a matter of time before increased development pressures will dictate a change in zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed application will introduce LC and MF-18 zoning in an area that is currently seen as an agricultural area. However, commercial and industrial development is moving northward along Greenwich. Property to the immediate southwest has been previously rezoned to LI Limited Industrial. Other property west of the LI zoned property has been developed with athletic fields. Greenwich has been improved to a four-lane arterial south of 29th Street. Sewer and water are located south of the site in close enough proximity to make their extension convenient.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request will add to the community's inventory of retail and multi-family zoned land, thereby ensuring an adequate supply LC and MF-18 zoned land. Denial would presumably result in a deferred economic gain to the property owner, as it only a matter of time before more intense use of the property is sought.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The site is located in Wichita's 2030 Urban Growth Area. The 2030 Urban Growth Area identifies land located on Wichita's urban fringe that is undeveloped, but has the potential to be developed by 2030. The land to the west of the application area is shown on the 2030 Wichita Functional Land Use Guide as an employment/industry center. Commercial Goal "B" says that it is important to develop future retail and commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses. Commercial location guideline 1 recommends that commercial sites should be located adjacent to arterial streets. Strategy III.B.3 seeks to reduce access points along arterial streets. If the land to the west is developed as the plan envisions, as an industrial or employment center, the requested zoning will act as a buffer for the proposed MF-18 parcel and for any residential uses located to the west.

6. Impact of the proposed development on community facilities: Commercial development will generate more traffic than residentially zoned land; however, facilities capable of meeting expected need can be guaranteed with the plat.

FOSTER asked if the 40-foot opening on the south side of the plat was adequate enough to provide for street plus buffering or screening requirements.

MILLER commented that could be adjusted during the platting process, but that staff is satisfied that the 40-foot opening will work.

FOSTER also asked about the east exit/entrance onto the property.

MILLER said that will also be addressed at the platting stage.

DALE MILLER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **HENTZEN** seconded the motion, and it carried (8-0).

6. **Case No.: ZON2008-61 and CUP2008-44** – North 37th LLC (Paul Jackson) / MKEC Engineering Consultant, Inc., (Greg Allison) Request City zone change from SF-5 Single-family Residential to GC General Commercial and City Community Unit Plan Amendment #1 to DP-295 on property described as:

The North Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT road right-of-way on the West and North.

TOGETHER WITH

The South Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT road right-of-way on the West; generally located south of 37th Street North and east of Maize Road.

BACKGROUND: On April 20, 2006, the Metropolitan Area Planning Commission approved LC Limited Commercial (“LC”) zoning subject to DP-295, the Stonebridge Commercial Community Unit Plan (“CUP”), on 36.3 acres located at the southeast corner of Maize Road and 37th Street North. The approved CUP contained 11 parcels, and was subject to platting within one year. Since the site’s initial zoning approval, the property owner has sought and received a platting extension to June 6, 2009, so the property is officially still zoned SF-5 Single-family Residential (“SF-5”) even though it has been approved for LC zoning and the CUP development standards.

The current application (Amendment #1) requests the 12 following changes: 1) Divide Parcel 11 into two parcels, 11a and 11b (General Provisions 2, 3A and B); 2) Re-zone Parcel 11b from LC to GC General Commercial (“GC”) (GP 3B); 3) Parcel 11a would allow all LC uses except correctional placement residential, limited, adult entertainment, pawn shop, asphalt or concrete plant, limited, and outdoor storage (GP 3A); Parcel 11b would allow all uses in the GC district except correctional placement residence, limited and general, adult entertainment, pawn shop, asphalt or concrete plant, limited, recycling processing center, animal care general, boarding, breeding or training kennel, hobby kennel, printing and publishing, general, outdoor recreation and entertainment, recreational vehicle campground, riding academy or stable, sexually oriented business, tattooing and body piercing, vehicle and equipment sales, except that construction equipment rental yard and yard maintenance rentals are permitted, vehicle

repair, general, manufacturing, limited and general and welding and machine shop (GP 3B); 4) increase the permitted gross floor area ratio from .30 to .32 (GP 2); 5) replace the standard parking minimum from four spaces per 1,000 square feet to a requirement to provide a minimum of 450 spaces for parcels 11a and b (GP 11B); 6) defer installation of the masonry screening wall along the south side of Parcel 1 for four years and waive the masonry wall if the tract to the south of Parcel 1 is developed non-residentially (GP 8F); 7) install a 14-foot tall wooden fence with brick support columns every 50 feet along the south and east side of Parcel 11b (GP 8G); 8) Parcel 11b shall be permitted signage per the GC district (GP 10K); 9) exempt Parcel 11b from the architectural controls applicable to the rest of the CUP (GP 4); increase the height of lighting standards from 25 feet to 27 feet (GP 7D); 10) permit outdoor storage as allowed in the GC district (GP 8D); 11) delete the prohibition regarding overhead doors located within 200 feet of residential zoning (GP 3A) and 12) eliminate the wall along the southern Parcel 11a property line.

Planning staff was advised that Parcels 11a and 11b will be under the same ownership, and that the site will be re-platted, and the southern 210 feet of Parcel 11a will become a reserve area. The plat that currently has MAPC approval, but not governing body approval, and the proposed revisions to the plat show Parcels 11a and b as both being located within Lot 11 and a proposed reserve.

The 280 acres located to the east and south, owned by USD No. 266 Maize School District, is zoned SF-5 and platted as the Maize School South Campus Addition, which is divided into two lots. Lot 1 of the plat contains the vast majority of the district's 280 acres, and adjoins the application area along the application area's eastern and southeastern property line (see attached site plan). Lot 1 is partially developed with the Maize South Middle School, associated athletic fields and facilities, and drainage facilities. It is projected that two more schools may be built on Lot 1. Drainage facilities that will provide additional buffer between the commercial and the school uses are to be located on the Maize school property located immediately east of the application area and runs along the application area's eastern property line. Additional drainage facilities are to be located immediately south of the application area for the first 402.51 feet west of the southeast corner of the application area. The land located west of this drainage improvement and south of the application area is Lot 2 which is being held for future development. Lot 2 has over a ¼ of Maize Road frontage. The property located to the west of Maize Road is in large lot residential use or agricultural use but has been platted and is being developed for commercial use, and is located in the City of Maize. The property to the north of 37th Street is located in the City of Maize and is being developed with a mix of office, institutional and commercial uses.

The division of Parcel 11 into Parcels 11a and 11b creates an awkward shaped Parcel 11a that is a little hard to imagine how it will be successfully developed as a stand-alone parcel, and leaves Parcel 11b without any street frontage. Access to Parcel 11b will be by cross lot circulation.

CASE HISTORY: On April 20, 2006, the MAPC approved CUP2006-00006 and ZON2006-00007 that created DP-295 Stonebridge Community Unit Plan and rezoned the property to the LC zoning district, subject to the development standards contained in DP-295. The zone change and the CUP were approved subject to platting within one year. The MAPC approved the Stonebridge Commercial Addition on July 20, 2006; however the plat has not been forwarded to the governing body. On July 10, 2007, the platting deadline was extended to June 6, 2009.

ADJACENT ZONING AND LAND USE:

NORTH: City of Maize; Institutional, office (university) and commercial
SOUTH: SF-5; Vacant
EAST: SF-5; Institutional (school)
WEST: City of Maize; Agricultural, large-lot residential

PUBLIC SERVICES: Maize Road is a four-lane arterial road, and 37th Street North currently is a two-lane arterial road. It is not proposed to change the site's plat approved access.

CONFORMANCE TO PLANS/POLICIES: **Commercial Objective III.B** encourages future commercial areas to “minimize detrimental impacts to other adjacent land uses,” with **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. As proposed, signage is to be adjusted to permit signage allowed in the GC district. **Commercial Locational Guideline #1** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterial streets. 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. The proposed CUP includes restrictions on uses, height of parking lot lighting and wider building setbacks for large (over 100,000 square feet) buildings in proximity to residential zoning.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting by June 6, 2009, and subject to the following conditions:

- A. Approve the zone change (ZON2008-00061) to GC General Commercial, except that uses permitted in Parcel 11b, as described in General Provision 3B, are restricted to “construction sales and service” and the outdoor storage of material and equipment ordinarily associated with construction sale and service activities, and home improvement store, and all the uses permitted in Parcel 11a.
- B. Approve the Community Unit Plan (DP-295), subject to the following conditions:
 1. Modify General Provision 10 K to limit signage to the signage permitted in the LC zone district.
 2. Prior to publishing the resolution establishing the zone change, the applicant shall record a document with the Register of Deeds indicating that this tract (referenced as DP-295) includes special conditions for development on this property.
 3. The applicant shall submit four revised copies of the approved 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: The application area is currently zoned SF-5, but is approved for LC zoning subject to DP-295. Land to the east is owned by USD 266 Maize School District and is being developed with schools and associated athletic fields. The property to the west is in the City of Maize, and is in large-lot residential or agricultural uses, but it has been platted and zoned for commercial use. The property on the northwest corner of Maize Road and 37th Street is already zoned LC, subject to DP-262. The property to the north is located in the City of Maize and is being developed with a variety of civic, institutional, office and retail uses.
2. The suitability of the subject property for the uses to which it has been restricted: As indicated above, the site is zoned SF-5, but approved for LC uses subject to the development standards contained in DP-295. The site could be developed as currently zoned, SF-5, however it is not the community’s development pattern to utilize land at the intersection of section-line roads for residential use. The property could be developed as approved, however the current application is designed to meet the needs of a specific user that cannot be accommodated in the LC zoning district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval should mitigate anticipated effects on nearby property owners.

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 would presumably represent a loss to the property owner. Approval would add choice to the market place with respect to uses that need outdoor storage.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: **Commercial Objective III.B** encourages future commercial areas to “minimize detrimental impacts to other adjacent land uses,” with **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. As proposed, signage is to be adjusted to permit signage allowed in the GC district. **Commercial Locational Guideline #1** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterial streets. 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. The proposed CUP includes restrictions on uses, height of parking lot lighting and wider building setbacks for large (over 100,000 square feet) buildings in proximity to residential zoning.
6. Impact of the proposed development on community facilities: Any increased demand on public facilities can be addressed with the replat.

MOTION: To reconsider Item #6 **ZON2008-61 and CUP2008-44**, which was previously approved as a Consent item.

ANDERSON moved, **SHERMAN** seconded the motion, and it carried (8-0).

FOSTER recused himself and left the bench.

DALE MILLER, Planning Staff presented the Staff Report. He mentioned a change to staff’s recommendation regarding signage on parcel 11b. The report recommended the parcel be restricted to LC sign regulations but staff has subsequently agreed to support GC signage for that parcel, as initially requested by the applicant.

MOTION: To approve subject to staff recommendation and amendment.

MCKAY moved, **DENNIS** seconded the motion, and it carried (8-0).

FOSTER back on the bench.

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7. **Case No.: ZON2008-62 and CUP2008-45** – ACCN Enterprises LLC c/o Craig Nelson (owner); MKEC c/o Greg Allison (agent) Request City zone change from SF-5 Single-family Residential to LC Limited Commercial and Creation of the Summit Crossing Commercial Community Unit Plan on property described as:

Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, Lakeside Acres Second Addition, Sedgwick County, Kansas.

A tract of land located in Lots 7, 8 and 9, Lakeside Acres Second Addition, an addition to Sedgwick County, Kansas, and being more particularly described as follows:

The west 225.00 feet of the south 69.5 feet of said Lot 7;

TOGETHER WITH,

The west 225.00 feet of said Lots 8 and 9; generally located south of 21st Street North and west of 127th Street East.

BACKGROUND: The applicant proposes to create a Commercial Community Unit Plan containing 13.51 acres, consisting of twelve parcels for development. The property is currently zoned SF-5 Single-family Residential (“SF-5”) and the proposed zoning is “LC” Limited Commercial. The property is located on the Southwest corner of 21st Street North and 127th Street East. The proposed development has Parcels 1 through 7 north of a dedicated street, and Parcels 8 through 11 to the south. Garnett, a dedicated local street is on the development’s west boundary.

The applicant requests a commercial CUP with LC land uses on all parcels except for parcels 9 and 12, which are restricted to NR Neighborhood Retail (“NR”) uses. Additional restrictions are for correctional placement residences, adult entertainment, pawn shops, and asphalt or concrete plants limited. If adjoining property remains residential, the south 200 feet has restrictions for convenience stores, service stations, auto repair, car washes, restaurants with drive-in or drive-through windows, and tavern/drinking establishments. No overhead doors are permitted within 200 feet of residential land use, and overhead doors may not face residential zoning unless screened. Car washes are subject to the UZC supplementary conditions.

Building heights are limited to 55 feet, except for on parcels 9 through 12 where they are limited to 35 feet; building coverage and FAR is limited to 35% on all Parcels. Building Setbacks along Garnett are proposed to be 25 feet; this does not meet the UZC required 35 foot setback for CUPs. Parking lot lighting is limited to 25 feet in height, except for within 150 feet of residential uses where it is restricted to 15 feet.

Signage is primarily consistent with the Sign Code for LC zoning, and NR zoning on parcels 9 and 12. No flashing, moving, portable, billboard, banner, or pennant signs are permitted. An LED sign is permitted for Parcel 1. One 25-foot tall development sign is permitted on Parcel 1 at 200 square feet, all other signs on arterials are limited to 12 feet in height and 120 square feet. All signs along Garnett are limited to eight feet in height and 100 square feet.

Access from 21st Street N will be limited to one right-in right-out opening. The applicant requests unlimited access from Garnett. Access from 127th does not meet the access management policy standard of 200-foot separation between right-in right-out openings and 400-foot separation between full access openings. The proposed access along 127th does align with the approved access for the Reed Commercial CUP development to the immediate east, across 127th Street East. A raised median is proposed on 127th Street East, immediately east of the applicant’s northernmost right-in right-out opening. The CUP requires a pedestrian circulation plan linking all buildings to the arterial sidewalks. Architectural controls require consistent building materials and colors, and prohibit metal as a predominant exterior wall material. A masonry screening wall is required along the south boundary. Development of all parcels within the CUP shall comply with the Landscape Ordinance of the City of Wichita.

Property north of this site is zoned SF-5 and developed with a church and school. Abutting the south boundary of the site are two SF-5 zoned residences fronting on 19th Street North; further south are residences fronting on both Garnett and 127th Street East. East of the site is the LC zoned Reed Commercial CUP, and MF-18 Multi-family Residential (“MF-18”) vacant platted lots. West of the site is an SF-5 zoned private high school.

CASE HISTORY: The property was platted as Lots 1 through 9 of the Lakeside Acres 2nd Addition in 1955. All lots have remained vacant except for Lot 6 which is developed with a single-family residence. The plat for this development was approved per staff comments by the Subdivision Committee on November 13, 2008.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Church, school
SOUTH:	SF-5	Residences
EAST:	LC, MF-18	Commercial development, vacant residential
WEST:	SF-5	High school

PUBLIC SERVICES: 21st Street North and 127th Street East are both section line arterial streets with 120-foot right-of-ways (ROW) tapering to a 150-foot ROW at the intersection. 21st Street north has a current traffic count of 9,487 vehicles per day; no traffic count is available for 127th Street East. Garnett is a paved local street with a 60-foot ROW. Access as shown on the CUP has been approved per staff comments by the Subdivision Committee. All other 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 “local commercial” development. This category is designated for commercial, office and personal service uses that do not have a significant regional market draw, the proposed development is in conformance with this designation.

Commercial Objective III.B encourages future commercial areas to: “Develop future retail/commercial areas which complement existing commercial activities, and 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 proposed CUP incorporates architectural, landscaping, parking lot elements and lighting and signage consistency and/or compatibility, cross-lot circulation, a site circulation plan, and combined ingress-egress. **Strategy III.B.3** seeks to reduce access points along arterial streets.

Commercial Locational Guideline #1 of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterial streets. The proposed development complies with this guideline, with the exception of the Garnett frontage. **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. The proposed CUP restricts the height of parking lot lighting to 25 feet, reduced to 15 feet within 150 feet of residential use and reduces the types of uses, restricts overhead doors and drive-through uses located near residential lots.

RECOMMENDATION: The CUP limits Parcels 9 and 12 to NR uses and signage; Parcel 11 abuts a residence to the south, and should have the same restrictions. Likewise, south facing building signs on Parcels 11 and 12 should be prohibited to protect the abutting residences. The applicant asks to reduce the code required 35-foot setback on Garnett to 25 feet. This reduction could be a benefit to the surrounding neighborhoods with increased pedestrian accessibility if the applicant provides a sidewalk along Garnett and Shadybrook. Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year, and subject to the following conditions:

- A. **APPROVE** the zone change (ZON2008-62) to LC Limited Commercial subject to platting within one year;
- B. **APPROVE** the Community Unit Plan (DP-317), subject to the conditions of the CUP attached and the following conditions:
 - 1. Revise General Provision #3B to include Parcel 11.
 - 2. Revise General Provision #6A to include Parcel 11 as restricted to NR signage.
 - 3. Add General Provision #6M to state “The total amount of sign face area of freestanding signage along Garnett shall not exceed 0.5 times the linear frontage.
 - 4. Add General Provision #6N to state “No building signs on Parcels 11 or 12 shall face south.”

5. Add General Provision #13E to state “A guarantee for a sidewalk to City of Wichita standards along Garnett and Shadybrook shall be provided at the time of platting.”
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. 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.
8. The applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-317) includes special conditions for development on this property.
9. 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: The site currently is mostly vacant with one single-family residence. Property north of this site is zoned SF-5 and developed with a church and school. Abutting the south boundary of the site are two SF-5 zoned residences fronting on 19th Street North; further south are residences fronting on both Garnett and 127th Street East. East of the site is the LC zoned Reed Commercial CUP, and MF-18 vacant platted lots. West of the site is an SF-5 zoned private high school.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned SF-5 Single-family Residential, and could be developed as such. However, the community’s long established commercial development pattern has been to place retail zoning and commercial uses on property located at the intersections of section line roads.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The impact of the commercial use on the nearby residential areas will be decreased by use restrictions, additional site restrictions nearer residential development, consistency in design elements such as architectural elements, landscaping, lighting and signage. Garnett, a residential street will see an increase in commercial traffic, affecting residents further south on Garnett.
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 “local commercial” development. This category is designated for commercial, office and personal service uses that do not have a significant regional market draw, the proposed development is in conformance with this designation. The CUP is in general conformance with the goals and guidelines of the *Wichita-Sedgwick County Comprehensive Plan*; it does not conform to the Access Management Policy separation standards for access points, and it does not conform to the Zoning Code required 35-foot building setback along Garnett.
5. Impact of the proposed development on community facilities: As proposed, traffic could be expected to increase on 21st Street North, 127th Street East, and Garnett. The platting process will finalize access issues and guarantees.

JESS MCNEELY, Planning Staff presented the Staff Report.

GREG ALLISON, MKEC ENGINEERING representing the applicant said they have coordinated with staff and are in agreement with staff comments. He said 21st Street will be improved in the future, and he believes that will address some of the traffic concerns. He said he also believes 127th Street will receive similar improvements as time goes by. He explained that the property owners have worked out an

agreement with the contractor working on 21st street to do grading work and that the dirt will be returned to the site later; that is why there are bulldozers on the site presently.

BENJAMIN LEADER, 1968 N. GARNETT said he has lived at that residence for 40 years, and that he has several comments and questions concerning the proposal. He also mentioned that bulldozers were already doing work at the site, he thought on the assumption that the Commission will vote favorably for the project. He said he did not feel the masonry screening wall along the south border was enough protection for the neighbors to the south. He said he would like to see berms with trees to screen residences to the south because he felt a wall was unsightly. He also mentioned that traffic can't get out onto 21st Street from either Garnett or 127th Street. He said he also wanted to discuss the broad scope of activities allowed under LC Limited Commercial zoning. He asked for detailed information concerning the proposed masonry barrier between the LC and residential zoning, including the 35-foot setback and landscaping.

MCNEELY commented that the Landscape Code has multiple buffering requirements, including 40 feet between trees.

LEADER said he doesn't think a masonry fence is enough to separate Limited Commercial zoning from Residential zoning. He said street work is seriously needed in the area. He mentioned development in that area including churches and schools and added the Limited Commercial zoning could mean quite a number of different businesses that could generate noise and traffic.

FOSTER asked how tall a berm Mr. Leader desired.

LEADER said he was not a landscape person but something similar to different locations he has seen around the City.

KYLE STEVENS, 2000 GARNETT said he realizes you can't stop progress but added that he has lived in the area a long time when there was nothing there and it was quiet. He said since then schools, churches, and nice big houses to the east have been added. He said what concerns him the most is the concrete fence (barrier) proposed along the north side of the houses. He said it isolates him in that this is all he'll ever have. He said the fence might affect his ability to sell and his property value if the back is walled off and that makes him nervous. He also mentioned that when it rains, the backyard fills up with water and he is worried that all the concrete construction might make that a bigger issue. He said other than that, he doesn't like the idea.

FOSTER commented that there have been similar cases where the applicant has built landscaped barriers onto adjacent property. He asked if that would be acceptable to Mr. Stevens.

STEVENS said he was more in favor of any natural sort of barrier, rather than a prison like concrete wall.

MARNELL asked if the drainage would be considered at platting.

STRAHL reported that the Drainage Plan had been approved by Storm Water.

GREG ALLISON, MKEC ENGINEERING said the landscaping they proposed was within City Code and that it was a little bit more doable as far as the wall was concerned. He said they never talked to the client as if there wouldn't be a wall. He said they would be willing to spend money on landscaping; wall and landscaping; or no wall and just landscaping subject to the Commission's thoughts and directions.

MCKAY asked about the other people to the south, and commented that both property owners would both have to agree on the proposed screening one way or the other.

ALLISON suggested a wall with landscaping.

FOSTER asked if there was adequate room going north to accommodate a 6-foot high berm.

ALLISON said an 8-foot berm would be a struggle, but that a 6-foot berm would be easier to accommodate with the 35-foot setback. He mentioned a 4-6 foot berm and 6-foot wall with evergreen type trees to soften the wall for the neighbors.

MARNELL clarified then he was proposing both a wall and a berm.

ALLISON said yes, they have room to do both. He suggested maybe a 4-foot berm would not be out of the question.

HILLMAN asked if they could contour the berm and landscape to help deter water running to the south.

ALLISON said that could help. He also mentioned forcing the drainage grade to the center where the detention pond was located. He said it was always their intention not to drain water onto the properties to the south, outside of easements.

MCKAY clarified that both people to the south agreed to that.

STEVENS said he didn't know if he could answer that question because he can't speak for the person who lives east of him. He said he could live with the berm if that is what the question is. He said he would rather go with natural landscaping as opposed to concrete block.

HILLMAN said it was suggested that the applicant would be willing to work with both neighbors and adapt the process.

MARNELL clarified so the intent was to give the applicant the flexibility of either a wall or a berm when working with the neighbors.

HILLMAN said yes.

MOTION: To approve subject to staff recommendation and to change the screening requirements to a wall or a berm.

HILLMAN moved, **MCKAY** seconded the motion, and it carried (8-0).

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8. **Case No.: CON2008-49** - Cortez Inc., c/o Mary or Enrique Cortez (owner/applicant); James Howell (agent) Request City Conditional Use for a Tavern/drinking Establishment and Nightclub in GC General Commercial zoning within 200 feet of residential zoning on property described as:

Lot 1 Nance Second Addition to Wichita, Sedgwick County, Kansas EXCEPT that part of Lot 1 described as commencing at the NW corner of Lot 1 Block A, Bud Palmer Second Addition; thence southwesterly along the east line of said Lot 1, Nance Second Addition said east line being the west line of Lot 1, Block A, Bud Palmer Second Addition, 29.65 feet for a place of beginning; thence West perpendicular to said east line, 1.70 feet; thence south 9.96 feet to a point of said east line, being 39.46 feet southwesterly of the NW corner of Lot 1, Block A, Bud Palmer Second Addition; thence northeasterly along said east line 9.81 feet to the place of beginning.

TRACT 1: Lot 1, Nance Second Addition to Wichita, Sedgwick County, Kansas EXCEPT that part of Lot 1 described as commencing at the NW corner of Lot 1, Block A, Bud Palmer Second Addition; thence southwesterly along the east line of said Lot 1, Nance Second Addition, said east line being the west line of Lot 1, Block A, Bud Palmer Second Addition, 29.65 feet for a place of beginning; thence West, perpendicular to said east line, 1.70 feet; thence south 9.96 feet

to a point of said east line, being 39.46 feet southwesterly of the NW corner of Lot 1, Block A, Bud Palmer Second Addition; thence northeasterly along said east line, 9.81 feet to the place of beginning; generally located north of 29th Street North and west of Broadway (344 W. 29th Street North).

BACKGROUND: The applicant is requesting a Conditional Use for a nightclub, on a 2.0-acre part of the Nance 2nd Addition. All of the approximately 3.37-acre Nance 2nd Addition, including the subject site, is zoned GC General Commercial (“GC”). The building on the site proposed to house the nightclub currently operates as a restaurant/drinking establishment (DRE license) which limits its liquor sales to 50% of the total sales. A nightclub allows unlimited liquor sales, regardless of whether or not there are food sales. The applicant proposes to provide live music or a DJ and dancing for patrons, which is considered a “nightclub in the city” per Art.II, Sec.II-B, 9(b) of the Unified Zoning Code (UZC). Nightclubs are a permitted use in the GC zoning district, but require a Conditional Use when located within 200 feet of church or a place of worship, public park, school or residential zoning, per Art.III, Sec.III-D(w) of the UZC. The site abuts land zoned SF-5 Single-family Residential (“SF-5”) and MF-29 Multi-family Residential (“MF-29”), thus triggering the Conditional Use requirement.

Staff has reviewed the site plan, and it has been determined that the parking requirement has been met. The parking requirement for a nightclub use is determined by occupancy (1 space per 2 occupants). The total occupancy for the building is 386 people (or 193 parking spaces), which includes the bar, the big and small party rooms and the main dining room. The applicant proposes to close off the big and small party rooms during the nightclub operation, which reduces the occupancy to 284 persons (or 142 parking spaces). The applicant currently has 112 off-street parking spaces available, which is less than the required spaces needed for the use. However, the applicant and the property owner adjacent to the east property line have a Covenant and Agreement Regarding Maintenance or Shared Parking Spaces document on file (recorded May 10th 2008) with the Office of Central Inspection that gives the applicant use of an additional 100 off-street/off-site parking spaces between the hours of 9:00 p.m. and 2:00 a.m. The 100 additional parking spaces allow the applicant access to 212 parking spaces, which exceeds the requirements for both the restaurant and nightclub. Landscaping, existing signage, screening and light pole locations are not shown on the site plans but will be requested by staff in the revised site plan which will be a condition of approval.

The south side of the site abuts 29th Street North, and directly across the road is property zoned B Multi-family Residential (“B”) which is largely undeveloped but does have with a few single-family residences located along the east and southeast part of the B zoned property, approximately 300 to 600 feet away from the subject site. Property located directly to the north is a part of the Nance 2nd Addition, zoned GC, but the property north of that is zoned SF-5 and consists of large lot single-family residences. Abutting the east property line of the subject site are three different zone districts. The property along the southern part of the east property line is zoned GC and is developed with a retail store, property along the central part of the east property line is zoned MF-29, and is developed with a four-plex; while the property abutting the northern part of the east property line is zoned SF-5 and is undeveloped. Along the west property line runs a 125-foot wide drainage canal, and the property abutting the west side of the drainage canal is zoned both SF-5 and MF-29, with the SF-5 zoned property developed with a single-family residence and the MF-29 zoned property developed with a church.

CASE HISTORY: The subject property is platted as part of the Nance Second Addition, which was recorded June 27, 1979.

ADJACENT ZONING AND LAND USE:

NORTH:	GC	Storage
SOUTH:	B	Vacant
EAST:	MF-29 & GC	Retail and Four-plex
WEST:	SF-5 & MF-29	Drainage Canal and Residences

PUBLIC SERVICES: The subject property fronts West 29th Street North, which is a four-lane minor arterial street with an 80-foot right-of-way at this location. The current traffic volume on 29th Street North is approximately 14,000 vehicles per day. The 2030 Transportation Plan designates that 29th Street North remain a four-lane arterial. Traffic generated by a nightclub typically higher than a restaurant; however, the site already operates as a restaurant/drinking establishment so the overall increase would be minimal and occur at a different time than the restaurant. The increase in traffic and late hours of a nightclub could negatively affect the residences to the east and west of the site. The subject property has all other public utilities.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for “Urban Residential” development. This category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. However this site has been zoned GC since 1979, and the present restaurant/drinking establishment use has been operating for many years. This site seems more suitable for a “Local Commercial” classification due to the location on an arterial street and the use which has been occurring at this location since the early 1980’s. Land classified as “local commercial” is also located to the west, across the canal, and to the southeast of the subject site.

RECOMMENDATION: The proposed nightclub site has in the past been a restaurant/drinking establishment (DER license), which limits its liquor sales to 50% of the total sales. The applicant is now requesting a Conditional Use for a nightclub, which allows unlimited liquor sales, regardless of whether or not there are food sales. The Conditional Use would also allow dancing, live music or music provided by a DJ. Because of the site’s proximity to residential zoning and uses, a key consideration would be prohibiting outside loud speakers and outdoor entertainment, as well as providing solid screening. Therefore, based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, subject to the following conditions:

1. Days of operation for the nightclub will be Friday and Saturday. Hours of operation will be between 10PM – 2AM.
2. The operation of the nightclub will only be allowed as long as there is a restaurant/DER as the primary use in the building.
3. A revised site plan will need to be provided to show the location of landscaping, existing signage, screening and light pole locations.
4. A minimum six-foot high screening fence constructed of wood, brick, stone, stucco, or concrete shall be provided along the length of the east property line abutting residential zoning.
5. Signage shall be in conformance with the sign code.
6. No outside loudspeakers or outdoor entertainment, including dancing.
7. The applicant shall obtain, maintain, and comply with all applicable permits and licenses necessary for the operation of a tavern and drinking establishment.
8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The south side of the site abuts 29th Street

North. Directly across the road from the application area is property zoned B Multi-family Residential (“B”) which is largely undeveloped, but there are a few single-family residences located along the east and southeast part of the B zoned property, approximately 300 to 600 feet away from the subject site. Property located directly to the north is a part of the Nance 2nd Addition, and is zoned GC. The property located north of that is zoned SF-5, and consists of large lot single-family residences. Abutting the east property line of the subject site are three different zone districts. The property along the southern part of the east property line is zoned GC, and is developed with a retail store. Property located along the central part of the east property line is zoned MF-29 and is developed with a four-plex. The property abutting the northern part of the east property line is zoned SF-5, and is undeveloped. Along the west property line runs a 125-foot wide drainage canal, and the property abutting the west side of the drainage canal is zoned both SF-5 and MF-29, with the SF-5 zoned property developed with a single-family residence and the MF-29 zoned property developed with a church.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned “GC” General Commercial, which accommodates office and retail uses, including a DER, the site’s current use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: If poorly managed a night club could generate a variety of detrimental impacts on nearby residences. The conditions of the Conditional Use will help minimize the negative impact.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for “Urban Residential” development. This category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. However, this site has been zoned GC since 1979, and the present restaurant/drinking establishment use has been operating for many years. This site seems more suitable for a “Local Commercial” classification due to its location on an arterial street, and the use which has been occurring at this location since the early 1980’s. Local commercial classified land is also located to the west, across the canal, and to the southeast of the subject site.
5. Impact of the proposed development on community facilities: It is possible that approval of this request could result in an increased demand for police services.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

SHERMAN moved, **HILLMAN** seconded the motion, and it carried (8-0).

9. **Case No.: CON2008-55** – John Bagley (owner); Paula Hernandez (applicant) Request City Conditional Use for Kennel, Boarding/Breeding/Training on property zoned LC Limited Commercial on property described as:

Lot 2 except the North 65 feet and except the East 10 feet for street, Gilbert's Addition, Sedgwick County, Kansas; generally located northwest of the West Street and Zoo Boulevard intersection (1211 N. West Street).

BACKGROUND: The applicant is requesting a Conditional Use to allow a grooming and boarding kennel for dogs. The LC Limited Commercial (“LC”) zoned, platted site is located just northwest of the West Street and Zoo Boulevard intersection. The site has a vacant medical building (built 1939) on it, which the applicant proposes to use for the kennel. The subject site has a paved parking lot, but a portion

of it is public street right-of-way (ROW). This portion of 11th Street ROW is unlikely to cross the abutting railroad tracks and serves no other property than the site. To continue to be used for parking, the applicant must vacate the ROW through the vacation process or obtain a minor street permit. A kennel can be considered for a Conditional Use in the LC zoning district, per the standards of the Unified Zoning Code's (UZC), "Supplementary Use Regulations"; Art.III, Sec.III-D, 6-k (see attached). The applicant proposes to put up a wooden fence around the area where the dogs will be walked on a leash. No outside dog runs or pens or outside activity other than walking the dogs is to be permitted.

The site is separated from Zoo Boulevard by an active railroad (RR) track and a bike path which run, at an angle, along its south – southwest side. Development located across the RR track and Zoo Boulevard include a LC zoned tire store, MF-18 Multi-family Residential ("MF-18") zoned apartments and SF-5 Single-family Residential ("SF-5") zoned church and houses. West Street separates the site from the TF-3 Duplex Residential ("TF-3") and SF-5 zoned single-family residence and duplexes, located east of the site. There are LC zoned undeveloped land, offices, medical offices and assisted living apartments located north - northwest of the site, on the west side of West Street. Further north there are also B Multi-family Residential ("B") zoned assisted living and convalescent care facilities and a vacant SF-5 zoned house. A small triangular shaped, SF-5 zoned parcel abuts the site's south side and is developed with two billboards.

CASE HISTORY: The property is part of Lot 2, Gilbert's Addition.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, B, SF-5	Offices, medical offices, assisted living, convalescent care, vacant land, vacant house
EAST:	TF-3, SF-5	Duplexes, single-family residences
SOUTH:	SF-5, RR track, road	Billboard, RR track, bike path, road
WEST:	RR track, road, LC, MF-18, SF-5	RR track, road, tire store, church, apartments, single-family residences

PUBLIC SERVICES: West Street is a four-lane arterial with a center turn lane. Zoo Boulevard is a four-lane arterial with a center turn lane. The traffic counts at this intersection range from 8,897 – 16,114 trips per day. 11th Street is a dead end street, which serves only the subject site; is unlikely to cross the railroad track and is currently being used as a parking lot. The 2030 Transportation Map shows no change to the status to these roads. All public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the area as appropriate for "Local Commercial" development. The "Local Commercial" category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Additionally, the Commercial Locational Guidelines of the Comprehensive Plan recommend that commercially-generated traffic should not feed directly onto local residential streets. A kennel can be considered for a Conditional Use in the LC zoning district, per the standards of the Unified Zoning Code's (UZC), "Supplementary Use Regulations"; Art.III, Sec.III-D, 6-k (see attached). No outside dog runs or kennels are permitted for a site this size.

RECOMMENDATION: Based on the information available prior to the public hearing, staff recommends the application be APPROVED subject to the following conditions:

- (1) The Conditional Use shall comply with section III.D.6.k of the Wichita-Sedgwick County Unified Zoning Code, including no outside runs or kennels, and applicable federal, state, and local requirements. All dogs being walked outside must be within the six to eight-foot wooden

fenced in area and always with a handler.

- (2) The number of adult dogs and puppies authorized to be boarded shall not exceed 12 at any one time.
- (3) The property shall be developed and maintained in accordance with a revised site plan approved by the Planning Director, showing lighting, landscaping, setbacks, easements, a 6-8-foot wooden privacy fence around the area where the dogs will be walked and all buildings in conformance with the UZC.
- (4) Vacate the 11th Street public right-of-way and execute a lot split or obtain a minor street permit.
- (5) The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian and proof of identification and ownership for all dogs five months and older.
- (6) Cleaning of the boarding kennel facility shall be performed as often as necessary to maintain sanitary conditions, and a "suitable method" of eliminating excess water from animal housing facilities shall be provided as determined by the Environmental Services. Interior surface materials shall be constructed of non-porous materials that are impervious to moisture.
- (7) Sufficient quantities of food and water shall be provided to keep the dogs in good physical condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.
- (8) All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The boarding kennel shall be maintained in a sanitary manner as required by applicable codes.
- (9) The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
- (10) The applicant shall obtain all applicable permits including, but not limited to building, health and zoning.
- (11) The boarding facility shall be open to the unannounced inspection by Code Enforcement personnel during reasonable daylight hours to insure continued compliance with the above requirements.
- (12) If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: The area is quartered by the Zoo Boulevard – West Street intersection, plus active railroad (RR) track and a bike path running parallel to Zoo Boulevard. The location and meeting of these two arterial roads, the RR tracks and the bike path make this area an unusually busy mix of vehicular, bike/pedestrian and rail traffic. Development located across the RR track and Zoo Boulevard includes a LC zoned tire store, MF-18 zoned apartments and SF-5 zoned church and houses. West Street separates the site from the TF-3 and SF-5 zoned single-family residence and duplexes, located east of the site. There are LC zoned undeveloped land, offices, medical offices and assisted living apartments located north - northwest of the site, on the west side of West Street. Further north there are also B zoned assisted living and convalescent care facilities and a vacant SF-5 zoned house. A small

triangular shaped, SF-5 zoned parcel abuts the site's south side and is developed with two billboards.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC and could be used for numerous retail and office uses by right.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Potential noise and odors generated by the dogs using the kennel are the potential negative impact. As it is currently developed, with the vacant medical building and occupying only a portion of Lot 2, Gilbert's Addition the proposed kennel will be relatively small in size, as confirmed by the 12 dog/puppy limit. The listed conditions should work to minimize any negative effects.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the area as appropriate for "Local Commercial" development. The "Local Commercial" category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Additionally, the Commercial Locational Guidelines of the Comprehensive Plan recommend that commercially-generated traffic should not feed directly onto local residential streets. The proposed kennel meets most of those criteria. A kennel can be considered for a Conditional Use in the LC zoning district, per the standards of the UZC's "Supplementary Use Regulations"; Art.III, Sec.III-D, 6-k (see attached). No outside dog runs or kennels are permitted for a site of this size.
5. Impact of the proposed development on community facilities: Approval should not impact community facilities to any significant degree.

BILL LONGNECKER, Planning Staff presented the staff report, noting that DAB VI had approved the request at their meeting last night.

GARY WEBB, 1225 N. WEST STREET said he is concerned about the proposal because he has lived next door to someone who has a dog and when dogs are frustrated; they bark. He said he has an accounting and tax preparation business, which isn't necessarily full-time year-round every single day; however, there are times when it is much more than a full-time job where they even work from 9:00 a.m. until Midnight. He said there is potential for noise and that some of his customers are elderly and that even small amounts of noise can affect his ability to conduct business with them if they are not able to hear or be heard. He is concerned that the kennel would grow and the size its noise would get out of hand so that they eventually it would have to be reined in or removed. He said the location provides many irritants to dogs, including the location of this building next to these streets, which have a high volume of pedestrian and vehicular traffic. He mentioned that dog's often bark when they can't see but know someone is there. He also mentioned that there is small game in the area, such as rabbits, which would excite the dogs.

TAPE 1, SIDE 2

He said he also wanted to know what happens when the dogs are outside, since the property abuts a railroad track and has a tendency to flood, which may spread disease and cause other problems. He said he was concerned about the security of a 6-8 foot wooden fence and mentioned that he was considering adding additional parking on the south side of the lot, where the fence is proposed to go. He said he is also concerned if a dog were to get loose. He said he checked with his insurance agent who told him if a dog bites a person on your property, the first liability would be to the offending business; however, he could be sued as well. He concluded by saying that he has major concerns that this could become something that could not be tolerable and would adversely affect his business.

LONGNECKER commented that the applicant and agent were present to address concerns and noted that when the dogs were outside they were to be with a handler and inside the wooden fence. He stated that there could only be a total of 12 dogs using the kennel at any one time and that would include puppies.

PAULA HERNANDEZ, 2050 N. WEST STREET, APPLICANT said she currently operates a dog grooming shop at 21st and West Street. She said there is a thin wall between her and an insurance office and a women's clothing store. She said no one has ever complained about barking and she does not think that will be a problem. She said they never let the dogs out; that they are on a leash at all times. She said her clients have told her she has the cleanest grooming shop in town. She said a lot of her clients are elderly also. She said the boarding option was for an established clientele who used her for grooming their dogs. She said it is expensive to board your dog at a vet and this would allow some of her customers to leave their dogs with her. She said the majority of her business is just grooming.

HILLMAN referred to the fenced portion in the diagram. He asked about the fence material and if the dogs would be allowed to run out there.

HERNANDEZ said the fenced area can be much smaller. She said her husband did not want to mow on the other side of the fence and that is how they came up with that design, so they can be flexible. She said they walk the dogs inside the fenced area so they can go to the bathroom, so it should not bother the neighbors. She said it is a solid wood privacy fence and that she did not want the dogs outside of it, which would place the dogs at risk.

MARNELL asked if the fence was a requirement of the application.

LONGNECKER referred to condition (1) of the application with regard to no outside runs or kennels and that all dogs being walked outside must be within the six to eight-foot wooden fenced area and always with a handler.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (8-0).

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- 10. Case No.: CON2008-56 – Rodney D. & Ladene A. Fowler Request County Conditional Use to permit an accessory apartment on property zoned RR Rural Residential, described as:**

Lot 10, Block A, Prairie Ridge Estates, Sedgwick County, Kansas; generally located 1/4 mile south of 63rd Street South, east of 127th Street East, on the south side of Dove Hill Drive (13203 Dove Hill Drive).

BACKGROUND: The applicant is requesting a Conditional Use to allow an accessory apartment on a RR Rural Residential (“RR”) zoned 5-acre lot, located at 13203 Dove Hill Drive; Lot 10, Block A, Prairie Ridge Estates. The site has a two story single-family residence (built 1999) and a large accessory structure. The applicant is proposing to convert a portion of the existing accessory structure into an accessory apartment for one of their parents. The Unified Zoning Code (UZC) requires a “Conditional Use” approval for an accessory apartment.

The site is part of the Prairie Ridge Estates single-family residential subdivision. This subdivision consists of 25 lots approximately 5 (most) to 8.5 acres in size. The subdivision is almost entirely developed, with houses appearing to have been built between 1999 and 2005. The subdivision is located in an unincorporated portion of Sedgwick County, which is characterized by quite a few large tract single-family residential developments breaking up farmland. The area also includes the approximately 148 lot,

Fairway Meadows Addition (recorded 8-31-1977), which consists of single-family residential lots ranging in size from around ½-acre to an acre. The Fairway Meadows Addition is located less than ¼-mile from the site, and is served by a community lagoon system. There is a golf course located approximately ¼-mile from the site. This entire portion of the county is zoned RR.

The UZC's Conditional Use requirements for accessory apartments are as follows:

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

CASE HISTORY: The subject site is part of the Prairie Ridge Estates single-family residential subdivision, which was recorded with the Register of Deeds on 11-2-1998. Staff has received 17 protests (see attached protest letters) from the 25-lot Prairie Ridge Estates single-family residential subdivision. These protests consistently note that there is a private restrictive covenant that is attached to the subdivision. One of its restrictions states that the use of a "...structure of a temporary character, mobile home, trailer, basement, tent, shack, garage, barn or other out building shall be used on any tract of subject property at any time as a residence, either temporarily or permanently is prohibited." The applicant was aware of this restriction as noted in their August 15, 2008, letter to the homeowners association, where they asked them to consider the conversion of a part of the accessory structure into a residence for their parents. A private covenant is a contractual agreement between private individuals and as such is outside the jurisdiction of the MAPC and the BoCC to enforce. Recourse in disputes with those under contract with the private restrictive covenant is with the courts.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	Large-lot single-family residential
SOUTH:	RR	Large-lot single-family residential
EAST:	RR	Large-lot single-family residential
WEST:	RR	Large-lot single-family residential

PUBLIC SERVICES: Sewer service is provided by an on-site lagoon. Water service could be provided by Rural Water District #3 or by well. This portion of 127th Street East is a sand and gravel Gypsum Township road. Dove Hill Drive is a sand and gravel residential street. The 2030 Transportation Map shows no change to the status to these roads. 63rd Street North is a paved county highway, which the 2030 Transportation Map shows becoming a 4-lane arterial, from Derby (Sedgwick County) to Rose Hill (Butler County).

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this site as appropriate for "rural areas." The rural area category includes land that is located beyond projected 2030 urban growth areas, in this case the site is just outside (east side of 127th Street East) the City of Derby's growth area. Land assigned the rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than agricultural uses commonly found in Sedgwick County, and predominately larger lot residential uses utilizing individual or community water and sewer services. The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main

structure, remains in a single ownership, and obtains water and sewer service from the main dwelling's hook-up.

An accessory apartment is typically viewed as a compatible use to a single-family residence, as long as there is enough land area and services can be provided for the additional dwelling unit. The applicant's proposal to convert a portion of an existing out building (garage, barn, shop, etc., etc.) into an accessory apartment is not out of the ordinary in the county or the city, and can be technically accomplished with the proper permits and inspections. The proposed accessory apartment would be the first in this subdivision, and it appears to be the first in the area. The proposed accessory apartment must be smaller than the primary residence. An accessory apartment must remain under single ownership and cannot be subdivided off of the subject site and sold off. The condition of the accessory apartment being on the same water and sewer assures that it will not be subdivided and sold off. Typically a lagoon can manage another living unit, but this needs to be confirmed by the County on a site by site basis. There have been cases where Rural Water Districts require separate meters for the accessory apartment.

The main issue is this appears to be the first accessory apartment in this subdivision and it appears to be the first in the area. Even though the proposed accessory apartment appears to be the first in the immediate area, the UZC considers it a use that can be considered as Conditional Use in the RR zoning district. Because the typical reason for an accessory apartment is either an aged parent or a member of the family having a medical hardship, it is not unusual to have a Conditional Use filed for an accessory apartment where none exist. It is more probable to have several in an area in the city rather than the county, simply because of the population density. That said this area of the county has a somewhat high population density, as earlier noted by staff in reference to development in the area. Staff usually supports these requests, while noting that there is nothing in the UZC to prevent the accessory apartment from being rented out to someone who is not a member of the family. It needs to be noted that a Conditional Use for a temporary manufactured home in the county (Art.III, Sec.III-D, 3) for people with medical hardships can be applied for. This Conditional Use requires the temporary manufactured home be removed from the property within 90 days of any change in the circumstances used as a basis for the Conditional Use; in this case the elderly parent not living in the temporary manufactured home any longer.

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

1. The accessory apartment shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC) for accessory apartments.
2. The site will be generally developed as shown on an approved site plan, obtaining and conforming to all applicable permits, including but not limited to building, health, and zoning, including connection to City water & sewer. The site shall utilize existing driveway approaches.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is part of the Prairie Ridge Estates single-family residential subdivision. This subdivision consists of 25 lots approximately 5 (most) to 8.5 acres in size. The subdivision is almost entirely developed with houses appearing to have been being built between 1999 and 2005. The subdivision is located in an unincorporated portion of Sedgwick County, which is characterized by a quit a few large-tract single-family residential development breaking up farmland. The area also includes the approximately 148 lot, Fairway Meadows Addition (recorded 8-31-1977), which consists of single-family residential lots ranging in size from around ½-acre to an acre. The Fairway Meadows Addition is located less than ¼-

mile from the site and is served by a community lagoon system. There is a golf course located approximately ¼-mile from the site. This entire portion of the county is zoned RR.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR, which accommodates agricultural uses, low-density single-family residential development and complementary land uses. The site is developed with a single-family residence and an accessory building, and could continue to be used as it is.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed accessory apartment will add a second dwelling unit to a five-acre lot that is located in an area where one dwelling unit per 4.5 to five-acre lot or tract is the norm; however the lots are all of sufficient size to accommodate a second dwelling without detrimentally impacting neighbors. The existing metal building, a portion of which is proposed to be converted to an accessory apartment, is not out of character with other existing accessory structures in the area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “rural areas.” The rural area category includes land that is located beyond projected 2030 urban growth areas. In this case the site is located just outside (east side of 127th Street East) the City of Derby’s growth area. Land assigned the rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than agricultural uses commonly found in Sedgwick County, and predominately larger lot residential uses utilizing individual or community water and sewer services. The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling’s hook-up.
5. Impact of the proposed development on community facilities: If developed in compliance with the recommended conditions of approval, existing community facilities are adequate.

BILL LONGNECKER, Planning Staff presented the staff report. He reported that he has received numerous calls on this case. He referred to the packet provided with the agenda, which included copies of the letters of protest, which totaled seventeen so far, and a copy of a private restrictive covenant. He noted that the private restrictive covenant specifically states that residents are not supposed to have another residential structure on the lots. He stated that the MAPC and the governing body have no jurisdiction on private restrictive covenants; that those matters needed to be handled through the court system.

SHERMAN asked what was the smallest size tract an accessory apartment can be located on in Rural Residential zoning.

LONGNECKER said two acres was the minimum lot size with a septic sewer system and 4.5-acres if the sewer system was a lagoon.

HENTZEN noted for the record that Commission members have received numerous ex parte contacts on this item.

RODNEY FOWLER, 13203 DOVE HILL, APPLICANT said he purchased the property back in August, and had no idea that there was resistance to their proposal for an accessory apartment. He said they are trying to take care of their elderly parents. He said he visited with Mr. Lillebridge, head of neighborhood group, and at that time he was given the indication that there wasn’t going to be any objection to his proposal. He said prior to purchasing the property, he made a formal application to the Prairie Ridge Estates Board. He said he received a registered letter neither approving nor disapproving the request, but said that if he didn’t hear anything within 30 days, it was approved. He said they

purchased the property on August 27, after the 30 days had expired. Because he had received no indication that the neighborhood had rejected his request, he began work on converting a portion of the metal outbuilding into an accessory apartment. He said that he had made the mistake of not getting a construction permit from the County, and that the County had come out and issued a "Stop Work Order." Since getting the "Stop Work Order," they had not done any other work on the accessory apartment. The County had also told him that in order to be legal; they needed to apply for a Conditional Use for an accessory apartment. He said their parents were currently living in the basement, which is not wheelchair accessible and that the accessory apartment would make it easier for them to take care of their folks.

HENTZEN asked Mr. Fowler if he was aware of the covenant when he bought the property.

FOWLER said he contacted Mr. Meek's office of the Sedgwick County Registrar of Deeds and was told that the covenant was not registered. He said the same day he signed the bid for the property he was presented a copy of the covenant, which appeared to be registered. He said Mr. Meek's office then confirmed that the covenant was registered. He referred to correspondence he received from the Prairie Ridge Estate Board where he was not given approval or disapproval of the plan.

HENZTEN again asked Mr. Fowler if he was aware of the covenant when he bought the property.

FOWLER said prior to closing on his house, that, yes, he was aware of the covenant.

MIKE LILLIBRIDGE, 13305 EAST BUCKTHORN said 15 out of the 23 residents in the addition were present today to protest the proposal. He said the other residents could not take off work, but that they did not want this to happen. He referred to the 17 letters that were submitted on the case and said he had 15 signatures from people who did not write letters. He said he would like to rebut Mr. Fowler. He said the letter Mr. Fowler sent was not approved or disapproved because it was in direct conflict of the covenants and that there was nothing to vote on. He said that when Mr. Fowler had come to his house to discuss the separate living space for his parents, he told him that he did not think he was going to have much opposition, but he said he would ask the neighborhood. He said the neighborhood said "no" and that is what he communicated back to him. He said Mr. Fowler knew that the neighbors do not want this to happen.

DAVE ROZAR, 6601 PRAIRIE RIDGE, REPRESENTING THE PRAIRIE RIDGE ESTATES HOMEOWNERS read the following statement:

"The power of this Board to grant a variance has general limitations. The actions of the Board must bear a substantial relationship to the public health, safety, morals or general welfare. Absent such a relationship, the Board usurps its powers to act. In this instance, the Fowlers purchased the property knowing that they could not use any outbuilding as a separate residence. They live in their home alone and have several bedrooms available for family members should they wish to utilize them.

First, the Fowlers seek a variance on the basis that they need to take care of their parents – no other reason. They have ample space within the primary residence to do that and if in fact that is the purpose of their request, then they can accommodate that need within the use of the primary structure. As such, there is no substantial relationship between the request and the public health, safety, morals or general welfare. To allow the variance under these circumstances would be to violate the powers granted to the Board.

Second, while the Board has no power over private contracts, it has an obligation to not act in contravention of restrictive covenants properly filed of record. Case law establishes that the zoning authority has no power to change or vary covenants running with the land if the covenants are valid. It is well established that zoning regulation or variance there from cannot destroy, impair, abrogate or enlarge the force and effect of a valid existing restrictive covenant. As such, this Board does not have the power to grant a variance that would be in clear violation of the restrictive covenants attaching to this property that prohibit the use requested.

Third, this Board holds these public hearing to consider comment from adjacent property owners. These hearings are not an exercise in futility or just something to pacify the public. These are held to consider public opposition and when every adjacent property owner objects, this Board must consider their voice in opposition and consider whether the requested variance bears a substantial relationship to the public health, safety, morals or general welfare given the opposition. That is, does it offend those who own adjacent properties and accepted it with known restrictions in light of the request.

In this case, the reason for the request can be easily met by allowing the parents to move into the primary structure, where the best care could be rendered anyway by one of the residents. The adjacent property owners and the Fowlers knew the proposed use was not allowed when they bought the property and it is morally offensive to all neighbors that under the circumstance, they have to be here today to oppose this request.

If there are property owners who all protest allowing a nightclub to be put in, when the property owners all knew that there was a covenant that prohibited such a use – does this Board ignore the property owners – even though zoning laws might permit such a use. This case is no different. This Board cannot and should not act arbitrarily and capriciously.

There is no substantial relationship and everyone is in opposition to a request that is not even necessary. Reasonable alternatives exist to meet the needs underlying the request and to grant the request under the circumstances would be arbitrary and capricious and in direct violation of the restrictive covenants that run with the land. The request should be denied.”

He concluded by stating that it was approximately 130 feet between the two structures, which will be difficult to manage in bad weather.

DENNIS asked legal counsel to clarify the Board’s authority regarding restrictive covenants.

BOB PARNACOTT, COUNTY COUNSEL, explained that the MAPC does not sit to interpret or apply a private covenant between private parties. He said the MAPC is present to determine land use issues and that restrictive covenants are private matters.

MARNELL asked Mr. Rozar to clarify his personal objection to the proposal for an accessory apartment.

ROZAR said first, the safety and welfare of the elderly couple being displaced in an outbuilding behind a house; and, second he said he did not want an apartment that can be rented out after the elderly couple passes.

JOANN DEMPSEY, 13200 E. BUCKTHORN ROAD said she was opposed to the request for the following reasons: The Fowlers knew about the covenants; everyone in the subdivision was contacted and they were all opposed to it yet the Fowler’s still bought their home; the Fowler’s had a choice to purchase another property, especially in today’s market. She asked why couldn’t the parents live with them in the basement on a permanent basis. This would allow them to check on them in the middle of the night. She added that she feels approval of this application will negatively affect property values and set precedence. She stated that she would like to recommend a condition if the Board approves the Fowler’s request, that this not be used as a rental property once it is no longer needed for their parents. She concluded by stating that the Fowler’s were fully aware of the covenants. She said she opposes this request and asked the Board please do not approve this.

SABRA EILERT, 12805 DOVE HILL DRIVE said she concurs with what everyone else has said. She mentioned property values and requested that once the parents pass away, this not be used as a rental property. She asked what is to stop other people from making a whole apartment complex once this is passed. She added that the Fowler’s basement is unfinished and that they could make it wheelchair accessible, because it was a walk-out basement. She said she feels for them and added that it is hard to watch parents get older but that they need to make different arrangements in the home.

KEN BURRIS, 12800 E. BUCKTHORN ROAD said he agrees with everyone else. He said they should utilize the property as it is; that the basement is approximately the same square footage as the metal building and added that the cost to bring the metal building up to code must be enormous.

MIKE THOMPSON, 13031 DOVE HILL DRIVE said he lives west of the Fowler's and that he is not one to get into anyone's personal business. He said many of the neighbors are concerned that as new neighbors move into the area, they will be allowed to apply for variances to make outbuildings into apartments. He said this is not what this neighborhood is about. He said they have made substantial investments in their properties and they would like to maintain that. He said that is the main reason the neighbors are opposed to the proposal.

LAURELL FISHER, 12901 DOVE HILL DRIVE said the neighbors feel for the Fowler's because many of them know what it is like to take care of elderly parents. However, they are very worried about what will happen in the future. She said they have put a lot of money and sweat equity into the residences in the neighborhood. She said they are also worried about what will happen when the Fowler's sell the property. She asked if the next step was renting the property to someone else. She said she believes this will bring down property values in the area.

CHERYL MYERS, 13103 E. BUCKTHORN ROAD said she concurred with everything that has been said. She said she has lived in the area five years now; loves all the residents in the area and that they have worked together and been there for each other. She said there are health issues concerning the proposal, not to mention the covenant. She also said she knows how it is with aging parents. She said she hoped the residents would respect one another and settle this issue. She concluded by saying that she was opposed to this happening.

DARRYL POYNTER, 13300 E. BUCKTHORN ROAD said Mr. Fowler got stopped because he did not pull the appropriate construction permits. He said he is also concerned about the welfare of the Fowler's parents. He mentioned that his wife was a registered nurse and that several other medical professionals live in the subdivision.

DAVE DUNNIGAN, 12801 E. BUCKTHORN ROAD said the metal outbuilding is 150 feet from the house and that there have been snowdrifts up to three feet in the winter, which means that there is no way you could wheel a wheelchair between the residence and the outbuilding in those conditions.

FRANK TESSER, 13030 E. DOVE HILL DRIVE said they moved into the area ten years ago when they realized they were not getting any younger and wanted to retire and settle down in a nice setting and surroundings. He said they were the third house built in the subdivision and one of the reasons they were attracted to the area was that it was zoned for single-family residences, which allowed nice houses separated by acreage with landscaping to make them more attractive. He said he is concerned that if a second residence is allowed on a lot, that it would open the door to other barns and outbuildings being used as residences.

JIM STRONG, 13103 DOVE HILL said he concurs with comments that have been made. He asked if a five-acre single family house required a lagoon, how that worked with two residences on the property.

MARNELL asked staff to respond to the question on the lagoon.

TAPE 2, SIDE 1

LONGNECKER commented that as a matter of routine, the County Code Enforcement staff would look at the lagoon to determine if it was able to support the additional accessory apartment.

MARNELL wanted it noted for the record that the applicant did not wish to rebut.

FOSTER asked Mr. Fowler if the basement was currently unfinished and if it was a walk-out basement.

FOWLER said the basement is finished except for carpet and that it was not a walk out basement but had six steps to get in and out of it. He mentioned that a ramp would be steep, and it would be tough for someone in a wheelchair to negotiate and expensive to install.

MCKAY asked if the MAPC could stipulate that the conditional use goes away when the parents no longer needed the accessory apartment.

LONGNCKER said the Commission could make that one of the conditions of the Conditional Use.

DENNIS commented that he didn't think that this Conditional Use request was a good idea, however, he said he can't make a motion based on what he thinks is or is not a good idea. He said the requested use complies with all the rules and regulations of the zoning code and that is what he must base his decision on. He suggested adding a condition that once the accessory apartment is no longer needed for the elderly parents, that the conditional use be revoked at that time.

MOTION: To approve subject to staff recommendation and the additional condition.

DENNIS moved, **ANDERSON** seconded the motion, and it carried (6-2).

HENTZEN and **HILLMAN** – No.

HENTZEN stated that he was going to vote against the motion. He mentioned serving on the County Commission in 1985 when this issue started to come up, and said he didn't know if the Commissioners had a clear understanding of the issues involved with a conditional use for an accessory apartment at that time. He said he doesn't know when the governing bodies decided to put that option into effect and give themselves permission to allow an accessory apartment with a Conditional Use. He said in his judgment that does not mean that just because they gave themselves permission to allow an accessory apartment with a Conditional Use, that it is mandatory to grant it. He said what makes this case different is that there are covenants, and he asked why the Commission would grant something that is in direct violation to covenants that people accepted themselves and, therefore, he was not going to vote for this application.

HILLMAN said he will be opposing the motion for very much the same reasons. He said even if this is approved, it will probably end up in court and he doesn't see any reason for that given the ability of the homeowner to modify or add to the home without a public hearing input.

MARNELL asked the applicant if they would agree to the condition that the Conditional Use terminates when the accessory apartment is no longer used for the original purpose.

FOWLER said that would be fine.

MARNELL said he was going to support the motion. He said he agrees with Mr. Dennis and that it was not the MAPC's place to try to replace a court of law in determining legal questions as to the covenants or whether he would do what the applicant is doing or not.

DAVE ROZAR, 6601 PRAIRIE RIDGE asked who enforces the restriction and how does that take place? Is it the Fowler's responsibility to notify the County when the parents pass away?

MILLER commented that when granting a Conditional Use for medical hardships there is a requirement that the applicant check in every year with the Superintendent of Code Enforcement to indicate that the use is still necessary. He said a second condition is that Code Enforcement be notified within 90 days of the need ending.

HENTZEN asked staff if they knew how many of the Conditional Uses that have been granted have been reviewed for compliance.

MILLER commented that he understood County Code Enforcement attempts to visit every Conditional Use site at least once a year.

HENTZEN asked if granting a Conditional Use includes the rule that when it ceases, they have to quit.

MILLER said that is required when an applicant applies for a medical hardship. He said this particular application was for an accessory apartment, and that type of application does not have that standard requirement, as far as the Unified Zoning Code is concerned; however, the Commission has included that requirement in the motion.

MOTION: To reconsider the application and add additional language and conditions provided by staff.

DENNIS moved, **ANDERSON** seconded the motion, and it carried (6-2).
HENTZEN and **HILLMAN** – No.

11. Case No.: CON2008-57 – Globe Engineering Co., Inc., (owner); Design-Build Construction, Inc., (applicant); Mark Savoy (agent) Request City Conditional Use for ancillary parking on property zoned TF-3 Two-family Residential on property described as:

Lots 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180 and 182, on St. Paul, Richmonds 3rd Addition to Wichita, Sedgwick County, Kansas; generally located east of Southwest Boulevard, north of Harry Street on the east side of Saint Paul Avenue.

BACKGROUND: The applicant is requesting a Conditional Use permit to allow ancillary parking on 1.06 platted acres zoned TF-3 Two-family Residential (“TF-3”). The subject property is currently a vacant lot located northeast of the intersection of St. Paul Avenue and Harry Street. The applicant indicates that ancillary parking is needed for employee parking for an existing industrial operation located directly west across St. Paul Avenue.

The attached site plan depicts 143 parking spaces measured at 8.5 feet wide by 18 feet deep, with nine compact spaces measured at 8.5 feet wide by 16 feet deep. The site plan shows two points of access off of St. Paul Avenue, near the northern and southern parts of the site. There is currently a six foot wooden fence that runs along the east property line. The site plan shows the existing wooden fence extended along the north and south property lines, tapering off to three feet high near St. Paul Avenue. The site plan also shows the planting of trees approximately every 50 feet along all property lines. According to the City of Wichita Off-Street Parking Standards, 5 disabilities accessible spaces will be required, and the location of light poles will also need to be shown on the revised site plan.

The property to the north, south and east is zoned TF-3 and is developed with single family residences to the north and east and duplexes to the south. The property to the west is zoned LI Limited Industrial (“LI”) and is developed with a steel fabricator and aircraft parts manufacture.

CASE HISTORY: The subject property is platted as part of the Richmond 3rd Addition, which was recorded March 12, 1987.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3	Single family residence
SOUTH:	TF-3	Duplex
EAST:	TF-3	Single family residence
WEST:	LI	Steel Fabrication Operation

PUBLIC SERVICES: Normal municipal services are available. Transportation access is via St. Paul Avenue, a paved residential street.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide Map of the Comprehensive Plan indicates that the subject property is appropriate for “Urban Residential” uses. This category does encompass areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. Schools, churches and other similar uses are also found in this category. This request for ancillary parking does not conform to the designation of the Land use Guide of the Comprehensive Plan for “Urban Residential” uses. There are, however, industrial uses located directly to the west of the application area that are zoned LI. There are also industrial uses to the northwest and southwest along the rail line, located just west of the application area. The Wichita Residential Area Enhancement Strategy Map shows this area as being appropriate for “revitalization” efforts. This maps targets those residential neighborhoods in the City of Wichita needing some level of special enhancement or improvement in order to ensure their future viability in terms of structural integrity, marketability, physical form and community cohesiveness. This proposed parking lot will be an improvement in infrastructure, which is one step under the Enhancement Map strategies.

RECOMMENDATION: Ancillary parking areas may be permitted in residential zoning districts through approval of a Conditional Use. Ancillary parking areas are subject to the Supplementary Use Regulations contained in Section III-D.6.p. of the Unified Zoning Code. With the recommended conditions of approval, the proposed parking lot complies with the requirements of the Unified Zoning Code; therefore, the ancillary parking lot is consistent with the zoning, uses, and character of the area. Based on the information available prior to the public hearing, staff recommends that the request be **APPROVED**, subject to the following conditions:

1. The Conditional Use shall only be permitted for an ancillary parking lot. There will be no parking of commercial vehicles without amending the Conditional Use permit.
2. A revised site plan will be required to show the location of light poles and the location of the 5 persons with disabilities parking spaces, which is required per the City of Wichita Off-Street Parking Standards. All parking spaces reserved for persons with disabilities shall comply with the size requirements of the Americans with Disabilities Act and other applicable codes.
3. The ancillary parking lot shall be well lighted with the lights shielded from adjacent residential properties, at a maximum height of 15 feet, including the base.
4. The ancillary parking lot shall be paved and properly striped.
5. Parking lot screening and street yard landscaping on the west side of the lot, and buffer trees along the south, east and north property lines, shall be planted and maintained according to a revised site plan submitted to and approved by the Planning director.
6. The applicants shall erect and maintain a six-foot fence, of standard construction materials, along the south, north and east perimeter of the ancillary parking lot.
7. The applicants will maintain his property and keep it free of debris.
8. The applicants shall submit a landscape plan for approval by the Director of Planning that complies with the Landscaping Ordinance.
9. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property to the north, south and east is zoned TF-3 and is developed with single family residences to the north and east and duplexes to the south. The property to the west is zoned LI and is developed with a steel fabricator and aircraft parts manufacture.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned TF-3 and could be developed with uses permitted in that district. However, the industrial zoning and uses directly across St. Paul Avenue reduces the likelihood that this property will be redeveloped with residential uses. An ancillary parking area may be permitted with approval of a Conditional Use and use of the subject property as a parking lot is a suitable use of the property in that it furthers the continued viable use of a nearby industrial property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, and the additional zoning restrictions of the Conditional Use should limit noise, lighting, and other activity from adversely impacting surrounding residential uses.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The 2030 Wichita Functional Land Use Guide Map of the Comprehensive Plan indicates that the subject property is appropriate for "Urban Residential" uses. This category does encompass areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. Schools, churches and other similar uses are also found in this category. This request for ancillary parking does not conform to the designation of the Land use Guide of the Comprehensive Plan for "Urban Residential" uses. There are, however, industrial uses directly to the west of the application area that are zoned LI. There are also industrial uses to the northwest and southwest along the rail line, located just west of the application area. The Wichita Residential Area Enhancement Strategy Map shows this area as being appropriate for "revitalization" efforts. This maps targets those residential neighborhoods in the City of Wichita needing some level of special enhancement or improvement in order to ensure their future viability in terms of structural integrity, marketability, physical form and community cohesiveness. This proposed parking lot will be an improvement in infrastructure, which is one step under the Enhancement Map strategies.
5. Impact of the proposed development on community facilities: The proposed use of this property would have a limited impact on community facilities. There may be an increase in traffic along St. Paul Ave.; however, access to the industrial use by the employees existed along this route before the application, so only a minor increase in traffic would be anticipated.

FOSTER asked about the 8-foot setback.

GOLTRY clarified that for an ancillary parking lot, the front setback can be reduced from 25 feet to 8 feet by administrative adjustment. She said there is to be a revised site plan and that buffering needs will be clarified on the revised site plan. She said that was something staff could handle internally.

DONNY GOLTRY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **SHERMAN** seconded the motion, and it carried (8-0).

12. **Case No.: CON2008-58** – Amanda Matthews Request County Conditional Use to permit a vehicle storage yard in a RR Rural Residential district on property described as;

The East 127 feet of the West 739 feet of the North 470 feet of the Northwest Quarter of Section 35, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located east of Hoover, south of 63rd St. (5407 W. 63rd St.), originally filed as ZON2007-63.

BACKGROUND: The applicant is requesting a Conditional Use to permit a “vehicle storage yard” on 1.27 acres located southeast of the intersection of south Hoover Road and west 63rd Street South (5407 West 63rd Street South). The property is nonconforming (with respect to minimum lot area), unplatted and is zoned RR Rural Residential (“RR”). The minimum lot area in the RR district is two acres. The applicant operates a bus rental business (Party Xpress) where their buses can be hired with Party Xpress drivers. The applicant would like to store up to 10 buses on the application area. They currently have 7 buses, with the longest one being 40 feet long; most are 25 to 30 feet in length. Usually Friday and Saturday are their busiest days, but bus activity can occur during the rest of the week; hours also vary with the clients’ needs.

The subject site is currently developed with a single-family residence. The residence is currently served by a septic system; water service is provided through a well. Both the well and the septic system are permitted through the Kansas Department of Health and Environment. Access to the site is provided by a drive directly to the application area off of 63rd Street South, and there is a second drive along the western property line. (The aerial photo that staff has access to depicts the western-most drive as being located on the property located to the west of the application area.) The site has a tree row located along the eastern property line, but no screening to the west. As depicted on the site plan, the vehicle storage area is to be located behind the site’s principal structure (approximately 115 feet south of 63rd Street), in front of an existing accessory structure (located approx 215 feet south of 63rd Street), and to the west side of the accessory structure.

The application area is located in a largely rural area. There is a single-family residence to the east (approximately 42 feet from the shared property line) and a non-conforming duplex to the west (approximately 30 feet from the shared property line). To the south is open farmland, and to the north is a single-family residence and open farmland. All of those properties are zoned RR. In the larger area surrounding the application area there are agricultural uses, large lot residences, warehousing, a grain elevator, and a chemical manufacture. The lot located at the southeast corner of 63rd Street South and South Hoover Road is zoned GC General Commercial (“GC”), and is undeveloped and owned by Occidental Chemical Corporation. The northwest corner of 63rd Street and Hoover is also owned by Occidental Chemical and is zoned GI General Industrial (“GI”).

According to the “Unified Zoning Code,” a vehicle storage yard is defined as keeping outside of an enclosed building for more than 72 consecutive hours of one or more motor vehicles (except inoperable vehicles), boats, trailers, or unoccupied recreational vehicles. The term “vehicle storage yard” does not include “wrecking/salvage yard.” Vehicle storage yard in the RR district is permitted only on lots developed with residence as the principal structure; (1) the vehicle storage area must be located behind the property’s principal structure; (2) for sites less than two acres in size the maximum vehicle storage area is limited to 11 percent of the lot area (a maximum of 6,085 square feet); parking is prohibited on septic systems or their drain fields; (3) only licensed operable vehicles may be stored; no sales, repair, dismantling, mechanical servicing of vehicles is permitted; no storage of materials; (4) minimum setback for stored vehicles from any residence constructed before the conditional use is approved is 20 feet; (5) all storage and circulation areas must be constructed with an all-weather surface; (6) visual screening of areas contiguous to residential zoning districts shall be provided; (7) lighting shall be in compliance with Unified Zoning Code standards and (8) Unified Zoning Code noise compatibility standards shall be complied with, and no outdoor speakers or sound amplification systems are not permitted.

CASE HISTORY: The subject site is currently unplatted. In 2007, the applicant filed a request (ZON2007-00063) to rezone the property from RR to GC in order to permit vehicle storage. On

December 13, 2007, the Haysville Planning Commission voted 7-1 to deny the request. On December 20, 2007, the MAPC approved the request to rezone the property to GC. On January 23, 2008, the Sedgwick County Board of County Commissioners (BoCC) deferred action on ZON2007-00063, and directed staff to evaluate an amendment permitting a “vehicle storage yard” as a “conditional use” in the RR district. On June 11, 2008, the BoCC adopted an amendment to the Unified Zoning Code that, with conditional use approval, allows a “vehicle storage yard” in the RR district in addition to the GC, LI Limited Industrial (“LI”) and GI districts. The applicant then amended their application to the current conditional use request.

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential; farmland; large lot residential
SOUTH: RR Rural Residential; farmland
EAST: RR Rural Residential; residence
WEST: RR Rural Residential; residence

PUBLIC SERVICES: Public sewer is not available. An on-site septic is in use. An on-site water well is in use. 63rd Street South is a two-lane, un-paved county road and south Hoover Road, just west of the subject site, is a two-lane, paved collector street. Neither road has traffic counts in this area.

CONFORMANCE TO PLANS/POLICIES: The application area is located within the City of Haysville’s “zoning area of influence,” and their planning commission will hear this case on November 13, 2008.

The application area is located in an area designated by the 2030 Urban Growth Area map as the “rural functional land use category.” This category includes land located outside any cities’ 2030 urban growth areas. Land so designated is intended to accommodate agricultural uses, rural based uses that are no more offensive than agricultural uses, and larger residential exurban lots, typically two acres or larger with provision for individual or community water and sewer services.

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

- A. Uses permitted on the site are limited to those permitted in the “RR”, Rural Residential zoning district; and “Vehicle Storage Yard,” subject to supplemental use regulations mm, and all other applicable regulations. The maximum number of vehicles to be stored on the site is 10.
- B. The site shall be developed and utilized in general conformance with the site plan. Vehicle storage shall be restricted to the graveled area located between the rear of the principal structure (residence) and the accessory structure (garage), and to the west of the accessory structure, as depicted on the site plan.
- C. No off-site, portable, variable or electronic message signs (LED) are permitted.
- D. There is to be no pick-up, drop-off, or gathering of people/passengers at the subject site. The site is to only be used for the storage/parking of the buses, “Vehicle Storage Yard.”
- E. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Property adjoining or across the street from the application area is zoned RR. Further to the west are two properties zoned “GC” General

Commercial and "GI" General Industrial. All of the properties within the immediate area of the subject site are developed with residences or used for agricultural purposes. Only the subject tract and two other lots located in the immediate area contain less than two acres.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, and is developed with a residence. The site could continue to be economically valuable as currently zoned and developed.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: This is predominately a rural area characterized by large-lot residences and agricultural uses. However, less than 400-feet west of the subject site is a lot zoned "GC" zoning, at the southeast intersection of 63rd Street and Hoover. Also, at the northwest corner of 63rd and Hoover is property zoned "LI" Limited Industrial, and used for agricultural purposes. Vehicle storage, the classification for this specific use, will generate an increase in larger vehicle traffic than is typically associated with single-family uses, and likely will generate more noise and light during evening and night time.
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 to remove the buses currently stored on the property, presumably causing an economic hardship. From the public's perspective, a denial would preserve the consistency of this area's rural zoning and character. Approval would offer the applicant a solution to a land use dilemma.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The application area is located in an area designated by the 2030 Urban Growth Area map as the "rural functional land use category." This category includes land located outside any cities' 2030 urban growth areas. Land so designated is intended to accommodate agricultural uses, rural based uses that are no more offensive than agricultural uses, and larger residential exurban lots, typically two acres or larger with provision for individual or community water and sewer services. Accepted land use practices dictate that commercial type uses should be encouraged to locate near arterial streets or major thoroughfares, and commercial type development should have site design features that limit noise, lighting and other byproducts of their activity that may adversely impact surrounding residential land uses.
6. Impact of the proposed development on community facilities: 63rd Street is an unpaved gravel street. Increased bus traffic potentially will increase the need for increased maintenance.

DALE MILLER, Planning Staff reported that this item would need to be deferred to the December 18, 2008, MAPC Hearing.

MOTION: To defer the item until the December 18, 2008, MAPC Hearing.

HILLMAN moved, **SHERMAN** seconded the motion, and it carried (8-0).

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13. **Case No.: Wichita Parks, Recreation and Open Space (PROS) Plan,** November 2008
Request Receive formal public comment and pass a resolution adopting the Wichita Parks, Recreation, and Open Space Plan, November 2008 as an amendment to the Wichita-Sedgwick County Comprehensive Plan

Generally located City-wide

On October 23, 2008, the Metropolitan Area Planning Commission received a briefing on the proposed *Wichita Parks, Recreation, and Open Space Plan* (PROS Plan). Following the briefing, the MAPC passed

a motion to set a public hearing date of November 20, 2008 to hear formal public feedback on the proposed PROS Plan.

The two-year long development of the Wichita PROS Plan was led by volunteer committees of Wichita citizens and included an unprecedented number of opportunities for public input. Likewise, the review process has continued the community engagement process, by providing presentations about the PROS Plan to the following organizations:

- Visioneering Wichita;
- East Heights Sheppard Center;
- Wichita Area Builders Association;
- Wichita Youth Wellness Providers;
- Delano Neighborhood;
- College Hill Neighborhood Association;
- Downtown Wichita Lions Club;
- Wichita Audubon Society;
- Arkansas River Coalition;
- Southwind Group of the Sierra Club;
- Health and Wellness Coalition of Wichita; and
- Kansas River Valley Triathlon Club.

In addition to the presentations to the organizations listed above, the PROS Plan has also been presented to all of the Wichita District Advisory Boards. Four (4) of the DABs unanimously recommend adoption of the PROS Plan. DAB IV members voiced endorsement of the concepts, but requested more time to review the document and to submit comments. No comments were submitted by the agreed due date. DAB III members voiced support for the PROS Plan, received and filed the report.

Document Changes: A number of changes have been incorporated into the PROS Plan document since the October 23, 2008 MAPC meeting. Many of the changes have consisted of text changes to correct punctuation and clarify concepts presented in the document. However, the following two (2) changes have either added or removed concepts from the PROS Plan:

- Removal of the reference to the legal debt capacity limit for the City of Wichita; and
- Removal of development excise taxes as an identified source of potential funding for capital improvement projects.

SCOTT WADLE, Planning Staff presented the Staff Report. He said the Wichita PROS Plan was a planning document designed to guide the provision, development and maintenance of Wichita's park, recreation and open spaces resources. He said the plan has been developed through a 2-year civic initiative during which more than 3,000 people were involved. He said on October 23, 2008, the Planning Commission received a briefing on the PROS Plan and passed a motion to set a public hearing for today's meeting. He said since October 23rd, the PROS plan has been presented to six community organizations, the Wichita Park Board and the six District Advisory Boards.

He said the Plan has been revised since that October 23rd briefing mainly to clarify concepts and to remove two concepts. He said the two concepts that were removed were: 1) the legal debt capacity for bonding; and 2) the references to development excise taxes. He said no funding is attached to the PROS Plan. He said any funding to implement the Plan will need to be secured through a separate initiative. He said the adoption of the PROS Plan as an element of the Wichita-Sedgwick Comprehensive Plan will replace the currently adopted 1996 *Parks and Pathways Plan* as a guide for the City of Wichita. He said the 1996 Plan will still be effect for Sedgwick County. He said staff recommendation is to receive formal public comment, close the public hearing, and pass a resolution adopting the *Wichita Parks, Recreation, and Open Space Plan, November 2008* as an amendment to the Wichita-Sedgwick County Comprehensive Plan, to replace the currently adopted 1996 Parks and Pathways Plan for the City of Wichita.

HILLMAN clarified that although no budget is associated with the PROS plan, in fact there are several million dollars set aside per year for this process.

WADLE clarified that no funding is specifically set aside to fund what is identified in the Plan; however, on an average approximately \$4 million is provided by the City to the Park and Recreation Department to fund construction and redevelopment of existing parks, but it is not specifically dedicated for the Plan.

FOSTER said he thought this was an impressive document and a lot of work. He mentioned that there were 4,000 acres of park land, yet there was 110,000 acres provided in homeowner organization reserves. He commented on the development community providing an asset to the community for open space and storm water retention facilities. He asked when these subdivision developments go through the engineering and platting process, does Park and Recreation get a chance to look at these to understand how those amenities are enhancing the community.

WADLE said he is not aware that Park and Recreation reviews plans as they go through the platting process. He said Planning staff does review the plans in terms of pathways and recommendations for easement dedications to develop future pathways.

FOSTER mentioned that developers in other communities have developed neighborhood parks and added that continued work with the development community is very important for the City. He concluded by stating that it is discouraging to see the Park budget continually going down. He said when this is presented to the City Council he hopes this will be stressed as a quality of life issue.

MARNELL commented that this was an aggressive and comprehensive plan and he wanted to thank members of the Advance Plans Committee, staff and other people who worked on the Plan and support it.

MOTION: To pass a resolution adopting the *Wichita Parks, Recreation, and Open Space Plan, November 2008* as an amendment for the City of Wichita to the Wichita-Sedgwick County Comprehensive Plan, to replace the currently adopted 1996 Parks and Pathways Plan.

DENNIS moved, **HILLMAN** seconded the motion, and it carried (8-0).

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- 14. Case No.: DER2008-09** - Request Amendment to The April 19, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code for codification, minor amendments to definitions and site development regulations, and addition of CBS Commercial Burn Site District as a special overlay zoning district.

General Location: City and County wide

DER2008-00009 represents a re-codification of the April 19, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code ("UZC"). Since 2001, over 15 substantive amendments have been added to the Code. This codification incorporates past amendments within the base document.

The attached draft of the Unified Zoning Code is provided for review and discussion at the MAPC meeting this Thursday, November 20, 2008.

The majority of proposed changes are modifications to style, not content. These include capitalization of the defined terms from Article II throughout the document. The advantage of the capitalization is to connect terms to their specialized meanings within the context of the Unified Zoning Code. Other modifications include adding consistency to punctuation, alphabetical ordering of defined terms, updating references to Comprehensive Plan land use designations and addition of a few new terms.

Other proposed changes include:

- Neighborhood Swimming Pool: the use is reclassified as a public or civic use (rather than a residential use) and parking requirements are reduced by ten percent.
- Fencing and Screening definitions and application to the Code are revised to add more clarity to how and where fencing and screening are required.
- Group Home, Assisted Living and Nursing Facility. Currently, the Unified Zoning Code is inconsistent with state statutes on congregate-type living facilities.
 - Per K.S.A. 12-736, the state requires group homes to be allowed in all residential zoning districts. By state definition, a Group Home means any dwelling occupied by a maximum of ten persons, with eight or fewer having a disability (including the elderly who need help with daily living). Group Home includes the Home Plus type of facility, which today the Unified Zoning Code classifies as Convalescent Care, Limited. It is recommended Group Home reclassified as a residential use rather than a public and civic use.
 - Nursing Facility would replace Convalescent Care, General.
 - Assisted living would become a broader classification that includes intermediate care adult care facilities.
- A substantive amendment under consideration is for a new overlay district to allow construction burn sites. A separate document will be provided to MAPC for discussing this proposed amendment on December 4, 2008.

DONNA GOLTRY, Planning Staff presented the Staff Report.

MARNELL commented that this revision to the Unified Zoning Code has been on-going for several months. He said fundamentally changes include language clean up and housekeeping, but that there were very little substantive changes.

GOLTRY briefly reviewed changes including the addition and refinement of some definitions; reduction in parking requirements for neighborhood swimming pools; quasi-residential uses including group homes and assisted living centers; zoning districts which allow assisted living centers and nursing home facilities; and uses permitted in Air Force Base District.

PARNACOTT mentioned for the record that to adopt the changes would require a majority vote of all members of the Commission present today.

LANG commented that the Commission could bring back a final version at the next meeting.

MARNELL asked if anyone from the public would like to comment. No one responded.

It was the general consensus that the public hearing remain open and the item be continued until the December 4, 2008, meeting.

The Metropolitan Area Planning Department informally adjourned at 3:55 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)