

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

February 19, 2009

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, February 19, 2009, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Darrell Downing, Chair; G. Nelson Van Fleet, Vice Chair; Don Anderson; David Foster; Bud Hentzen; Hoyt Hillman; Bill Johnson (in @ 1:40 P.M.); Ronald Marnell; John W. McKay, Jr.; M.S. Mitchell; Don Sherman and Debra Miller Stevens. David Dennis and Michael Gisick were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Jess McNeely, Senior Planner; Bill Longnecker, Senior Planner; Derrick Slocum, Associate Planner and Maryann Crockett, Recording Secretary.

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1. Approval of the February 5, 2009 MAPC meeting minutes:

MOTION: To approve the February 5, 2009 Minutes, as amended.

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

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB 2008-91: Final Plat -- TURKEY CREEK COMMERCIAL ADDITION**, located on the northeast corner of Pawnee and 135th Street West.

NOTE: The site has been approved for a zone change (ZON 2008-50) from SF-5 Single-family Residential to LC Limited Commercial. The Turkey Creek Commercial Park Community Unit Plan (CUP 2008-33, DP-314) was also approved for this site.

STAFF COMMENTS:

- A. Wichita Water Utilities Department requires the applicant to extend water (transmission and distribution mains) and sewer (mains and laterals) to serve all lots being platted.
- 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. As requested by the Subdivision Committee, City Stormwater Engineering has met with the property owners to the south to review the drainage plan. The applicant's drainage plan has been approved.
- D. In accordance with the CUP, the applicant shall provide guarantees for left turn center lanes and right turn decel lanes to all full movement approaches.
- E. Access controls have been platted in accordance with the CUP approval. The plat proposes two access openings along both Pawnee and 135th St. West including two joint openings.

- F. A restrictive covenant shall be submitted that permits future cross-lot access with the abutting property owners to the north along 135th Street West effective upon platting of that property for any commercial development.
- G. The joint access openings shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- H. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- I. 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.
- J. County Surveying advises that a bearing is needed on the west diagonal line of Lot 2, Block A.
- K. County Surveying advises that a bearing is needed on the south diagonal line of Lot 3, Block A.
- L. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- 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. 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.

VAN FLEET moved, **MILLER STEVENS** seconded the motion, and it carried (11-0).

2-2. SUB 2009-05: One-Step Final Plat -- SEDGWICK COUNTY FIRE STATION NO. 39
ADDITION, located north of 39th Street South and on the east side of 263rd Street West.

NOTE: This unplatted site is located in the County in an area designated as “rural” by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Garden Plain Area of Influence. The site has been approved for a Conditional Use (CON 2008-59) for a Government Service.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Sedgwick County Rural Water District No. 4. If service is available, feasible and the property is eligible for service, County Code Enforcement recommends connection.
- 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. County Engineering has approved the drainage plan.
- E. The footnote content should be changed to “County Engineer.”
- F. The platlor’s text should make reference to the County instead of the City.
- G. County Engineering has approved the access controls. The plat denotes two openings along 263rd St. West.
- 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 (USACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.

- I. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- J. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. 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.)
- L. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- M. 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.
- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should 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.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

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

VAN FLEET moved, **MILLER STEVENS** seconded the motion, and it carried (11-0).

- 2-3. **SUB 2009-07: One-Step Final Plat -- HARLEY VOTH ADDITION**, located on the south side of Douglas Avenue and east of West Street.

NOTE: This is an unplatted site located within the City. The site has been approved for a zone change (ZON 2007-28) from LC Limited Commercial to GC General Commercial. A Protective Overlay #192 was also approved for this site addressing signage, screening, parking areas and permitted uses.

STAFF COMMENTS:

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Engineering has approved the applicant's drainage plan.
- D. Traffic Engineering has approved access controls. The plat proposes two openings along Douglas.
- E. A restrictive covenant shall be submitted that permits future cross-lot access with the abutting property owners to east and west.
- F. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved Protective Overlay and its special conditions for development on this property.
- G. On the final plat tracing, the MAPC signature block needs to reference "Darrell A. Downing" as Chairman.
- H. The MAPC signature block needs to reference "John L. Schlegel, Secretary."
- I. The spelling of "chiseled" needs to be corrected in the legend.
- J. The spelling of "We, the undersigned" needs to be corrected in the mortgagor's certificate.
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of 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. 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.

VAN FLEET moved, **MILLER STEVENS** seconded the motion, and it carried (11-0).

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- 2-4. **SUB 2009-08: One-Step Final Plat -- PUCKETT ESTATES ADDITION**, located on the northwest corner of U.S. 54 Highway and 231st Street West.

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

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. County Engineering has approved the applicant's drainage plan. A minimum pad elevation of 1353 needs to be denoted.

- D. The plat denotes one opening along both U.S. 54 Highway and 231st St. West. County Engineering requests the opening on 231st St. West be located at the end of the right-of-way taper.
- E. Sedgwick County Fire Department advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- F. The dedication of street right-of-way shall be referenced in the plattor's text.
- G. 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.
- 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. 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.

VAN FLEET moved, **MILLER STEVENS** seconded the motion, and it carried (11-0).

3. PUBLIC HEARING – VACATION ITEMS

3-1. VAC2009-01: City request to vacate a platted setback.

OWNER/APPLICANT: Tony Blake

LEGAL DESCRIPTION: The north 12 feet of the platted 20-foot setback that runs parallel to the south lot line of the east 101.13 feet of Lot 13, Brookside Addition and Kellogg Drive, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located midway between Washington and Hydraulic Avenues, on the northwest corner of Lulu Avenue and Kellogg Drive (WCC #I)

REASON FOR REQUEST: Expansion of existing building

CURRENT ZONING: Subject property, abutting and adjacent northern and western properties are zoned LI Limited Industrial (“LI”). Adjacent eastern property is zoned GC General Commercial (“GC”).

The applicant proposes to vacate the north 12 feet of the platted 20-foot setback, on the described LI zoned corner lot, thus making an 8-foot street side yard setback. This setback is located along Kellogg Drive. The Unified Zoning Code (UZC) has no minimum street side yard setback for the LI zoning district. Per the UZC (Art.III, Sec.III-E, e (6)), the short side of a corner lot shall have the front yard setback. The short side of this lot is the Kellogg Drive side, by 8.82 feet. However because of the small difference between the lot’s Kellogg and Lulu street frontages, the applicant’s proposed direction for expansion of the existing building (towards Kellogg), whose parking and entrance is off of Lulu, and the adjacent eastern and abutting western properties’ buildings expanding out towards Kellogg, OCI has recognized the lot’s Kellogg frontage as the street side yard. The proposed expansion will not go beyond the adjacent eastern and abutting western properties’ buildings. The applicant will not lose any parking with the proposed expansion, nor will the existing trees be removed. There are no platted easements within the platted setback. There are no manholes, sewer or water lines within the described portion of the platted setback. Comments from franchised utilities and Storm Water have not been received and are needed to determine if they have utilities located within the described portion of the platted setback. The Brookside Addition was recorded with the Register of Deeds September 19, 1903.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of platted setback.

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

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time **December 18, 2008**, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted setback and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

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

- (1) Vacate the north 12 feet of the platted 20-foot setback that runs parallel to the south lot line of the east 101.13 feet of Lot 13, Brookside Addition and Kellogg Drive. The approved legal description of the vacated portion of the platted setback, will only be where the proposed expansion of the existing building will be located, this will preserve the platted 35-foot setback that runs parallel to the east lot line of Lot 13, Brookside Addition, Wichita, Sedgwick County, Kansas, and Lulu Avenue. Send the approved legal description to Planning on a Word document, via e-mail.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

- (1) Vacate the north 12 feet of the platted 20-foot setback that runs parallel to the south lot line of the east 101.13 feet of Lot 13, Brookside Addition and Kellogg Drive. The approved legal description of the vacated portion of the platted setback, will only be where the proposed expansion of the existing building will be located, this will preserve the platted 35-foot setback that runs parallel to the east lot line of Lot 13, Brookside Addition, Wichita, Sedgwick County, Kansas, and Lulu Avenue. Send the approved legal description to Planning on a Word document, via e-mail.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.

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

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

MITCHELL moved, SHERMAN seconded the motion, and it carried (11-0).

PUBLIC HEARINGS

4. **Case No.: ZON2008-68 and CUP2008-46** - Wichita Towers, LLC & Maize 54, LLC (applicants/owners); Poe & Associates c/o Tim Austin (agent) Request City zone change from SF-5 Single-family Residential to LC limited Commercial and creation of City Community Unit Plan for commercial development on property described as:

That part of the SW ¼ Section 29, Township 27, South, Range 1 West of the 6th P.M. Sedgwick County, Kansas described as Beginning at the N.E. corner of Lot 1, Block A, Kansas State Bank Addition, Wichita Sedgwick County, Kansas being a common corner of the S.E. corner of Lot 8, Verda Vista Sedgwick County, Kansas; thence N88⁰20'30" E along the common line as extended East, 805.46 feet; thence S14⁰10'35" E, 401.95 feet to a point 40 feet North of the North line of U.S. 54 Highway as deeded on Film 2144, Page 1847; thence N74⁰04'48" E parallel with and 40 feet North of said U.S. 54 Highway, 258.59 to a point on the West line of Miles Lakewood Village Second Addition, Wichita Sedgwick County, Kansas; thence S01⁰20'11" E along the West line of said Miles Lakewood Village Second Addition, and David Moore 12th Addition, Wichita Sedgwick County, Kansas, 41.31 feet to a point on the North line of said U.S. 54 Highway; thence S74⁰04'48" W along said U.S. 54 Highway, 419.31 feet; thence S15⁰55'12" E, 125 feet; thence S71⁰17'23" W, 324.5 feet; thence S76⁰05'36" W, 210.7 feet; thence S83⁰50'05" W, 19.89 feet to the S.E. corner of Lot 1, Block A, Quiktrip 10th Addition, Wichita, Sedgwick County, Kansas; thence N01⁰19'41" W, 236.41 feet to the N.E. corner of said Quiktrip 10th Addition; thence S88⁰12'33" W along the North line of said Quiktrip 10th and the North line of Lot 1, Block A, Quiktrip 8th Addition, Wichita, Sedgwick County, Kansas, 236 feet to a bend point in the East line of said Quiktrip 8th Addition; thence N01⁰18'15" W along the East line of said Quiktrip 8th Addition and Kansas State Bank Addition, 500 feet to the point of beginning. Generally located on the northeast corner of Maize Road and Kellogg Street.

BACKGROUND: The applicants request a zone change from SF-5 Single-family Residential ("SF-5") to LC Limited Commercial ("LC") on approximately a 12.03-acre unplatted tract. The requested LC zoning supports the creation of Commercial Community Unit Plan CUP DP-318. DP-318 consists of the 9.89-acre Parcel 1 and the two smaller out Parcels 2 (1.22-acres) and 3 (0.92-acres). The proposed CUP has frontage on Kellogg Street and proposed access onto Maize Road.

The proposed uses for all Parcels are: community assembly, day care, group homes, hospital, limited animal care, automated teller machine, bank or financial institution, broadcast recording studio, hotel/motel, medical service, general office, personal care, personal improvement service, printing and

publishing, recreation and entertainment indoors, general retail, and no convenience stores with gas islands, restaurants with drive thru or drive in service, service stations, or vehicle repair when located within 200 feet of residential zoning. The CUP prohibits overhead doors for vehicular repair or vehicular service facing residential zoning districts.

The CUP's proposed maximum building coverage is 30%; floor area ratio is 30%, except for Parcel 1 which proposes a 45% floor area ratio. The proposed maximum building height is 35 feet, except for Parcel 1, which has a proposed 55-foot maximum building height. Because Parcel 1 abuts SF-5 zoning on its north, east and south sides, compatibility height standards (Art IV, Sec IV-C, 5(a)) of a maximum building height of 35 feet, when within 50 feet of the lot line of property zoned TF-3 Two-family Residential ("TF-3") or more restrictive are in effect. The LC zoning district allows a maximum height of 80 feet. The applicant is requesting a waiver of the compatibility height standards as well as the CUP standards for the minimum 35-foot setback and the 6-8-foot tall screening wall.

When considering a CUP the Planning Commission or the Governing Body can reduce or waive height standards, well as well setbacks, including compatibility setbacks, lot coverage, parking and/or screening requirements in this section and elsewhere in the code as part of the approval or amendment of a CUP, where the objectives of the Comprehensive Plan and good planning practices are furthered, provided the Planning Commission or the Governing Body must set forth an explanation of how such modification or waiver meets the criteria and purpose of this section; Art III, Sec III, 2-d.

The subject property has been scraped clean and a significant portion of it is identified as being in the FEMA floodway and flood zone. The floodway and flood zone spread out from both sides of the Cowskin Creek, which flows through or runs against an eastern portion of the subject property. The city has recently made improvements to this area around the Cowskin to improve the drainage around and through the Cowskin, which has been prone to flooding, causing repeated damage to residences and properties around it. The Cowskin comes onto the subject property from the north and exits it, flowing south under the Kellogg/US 54 overpass and frontage roads.

Abutting the north side of the subject property is undeveloped SF-5 zone land, some of it owned by the applicant, with most of it identified as being in the FEMA (Cowskin) floodway and flood zone. Northwest of the subject site and abutting the just mention undeveloped land is a single line of SF-5 zoned single-family residences (most built in the late 1950s) that face Maize Road. Abutting the west side of the subject property is a LC zoned bank and an undeveloped lot. Where the LC zoned bank property ends and the SF-5 zoned residences begin, marks the north end of the subject property. Abutting the south side of the subject property is an LC zoned Quick-Trip convenience store & its enclosed automated car wash. The bank and the Quick-Trip development have all been built since 2001. The subject property has frontage and proposed access onto the Kellogg frontage road, which is one-way west. East of the subject property and across the Cowskin is developed, SF-5 zoned, single-family residential subdivisions. There is a thick grouping of trees between the Cowskin (on its east bank, off of the subject property) and these single-family residences.

CASE HISTORY: The site used to be a farmstead with access to Maize Road and Kellogg. It currently has been scraped clean. The proposed access onto Maize Road appears to be in the same location of the old private drive to the farmstead. In 2004 Public Works acquired a perpetual easement for ponding and overland flowage, located along the eastern portion of the subject property (and beyond) where the Cowskin Creek flows through it or abuts it. The easement was obtained as part of the City's efforts to lessen the risk of flooding through the Cowskin Creek drainage area.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Undeveloped property
SOUTH:	LC, SF-5	Quick Trip convenience store & enclosed automated car wash, City owned property associated with Kellogg Street/US 54 & Cowskin Creek drainage
EAST:	SF-5	Cowskin Creek, undeveloped property, single-family residential
WEST:	LC	Undeveloped lot, bank

PUBLIC SERVICES: Maize Road is a four lane principal arterial, with turn lanes. Kellogg Street/US 54 is an east – west urban freeway and runs through the most area of the City. Its one-way west frontage road runs in front of the subject property with two thru lanes and two turn lanes. Current traffic counts are between 28,900 – 45,800 ADT's. All other normal public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” map depicts the interior portion of the site (Parcel 1 of the CUP) as appropriate for “urban residential” uses. It depicts the portion (Parcels 2 and 3) along the Kellogg frontage road as appropriate for “regional commercial”. This classification encompasses major destination areas containing concentrations of commercial, office, and personal service uses that have a predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships, and big box retail outlets with a regional market draw. Regional Commercial areas may also include higher density residential housing and uses typically found in Local Commercial areas. The applicant's proposed LC zoning gives the subject property, with its frontage limited to Kellogg and encumbered with drainage, an interior thrust to line up behind existing and partially (as well as recently) developed LC zoned sites with frontage on Maize Road, which the subject property does not have. The drainage considerations (due to the Cowskin) could limit the size of commercial or residential development on the subject property. Access to the site is restricted to a recorded/proposed 30-foot wide drive onto Maize (principal arterial) and two proposed drives (40-foot and a 60-foot wide drives) onto the one-way west Kellogg (urban freeway) frontage road. The site meets the locational criteria for commercial development in that it is abutting existing commercial development and has access, although limited, to an arterial and freeway.

A CUP is intended to protect the public safety, convenience, health and general welfare through standards and provisions that establish requirements as to lot coverage, height, setback, and screening that permit review, of the size shape and location of such facilities with due regard to the tract as a whole so as to ensure the development of facilities with proper ingress and egress, parking drainage facilities, screening, sign control, environmental control and other requirements and amenities. As proposed the applicants are requesting the waiving of the minimum CUP and compatibility standards for building height, the 6-8-foot tall screening wall and setbacks. Even though the applicants currently own a portion of the abutting northern SF-5 zoned properties, property can change ownership and to waive the above noted minimum CUP and compatibility standards would have a negative impact on any subsequent owners of the abutting northern properties and the adjacent single-family residences.

The proposed LC zoning is more than what is recommended by the Functional Land Use Guide, which confines the subject property's commercial use to its Kellogg frontage. The relatively recent (2000) rezoning to LC of the bank lot and the undeveloped lot along Maize Road makes the proposed LC zoning of the subject property behind them a possibility. However, any commercial development on the subject property would mean more impervious surface, which mean more runoff into the flood prone Cowskin. The site's restricted access, frontage and the high traffic volume around it are other critical consideration. The proposed access onto Maize Road, through 30-foot wide access easement that is not owned by the applicants means access thru and to Maize is not certain; provide a copy of the recorded document at the time of platting. The CUP drawing also shows a 10-foot contingent dedication of right-of-way running parallel to the south side of this access easement. These 10 feet would be an improvement for access onto

Maize if added to the 30-foot access easement. Placing a monument sign in the access easement is problematic in regards to the size of the sign taking up needed traffic lane space, the need for the applicant to provide clear ownership of the space (the easement is on the bank property) for the monument sign and potential interference with cross lot access between the bank and the undeveloped lot to the south.

RECOMMENDATION: The proposed zone change and CUP is only partially in conformance with the “Wichita Land Use Guide” recommendation of regional commercial use, and that is only for the portion along Kellogg. The relatively recent (2000) rezoning to LC of the bank lot and the undeveloped lot along Maize Road makes the proposed LC zoning of the abutting subject property behind them a possibility. The applicants request to waive the minimum CUP and compatibility standards for building height, the 6-8-foot tall screening wall and setbacks. Staff cannot support these request because of the site’s proximity to single-family residential development and because the applicants have not given a rational behind their request. Although drainage will be addressed during the platting of the subject property, Storm Water has requested that the perpetual easement for ponding and overland flowage, located along the eastern portion of the subject property be deeded to the City to ensure drainage considerations remain minimal. Based on these factors, plus the information available prior to the public hearing, staff recommends the request be **APPROVED** subject to the following conditions:

- A. **APPROVE** the zone change (ZON2008-66) to LC Limited Commercial (“LC”) on the described property, subject to platting within a year;
- B. **APPROVE** Community Unit Plan DP- 318 (CUP2008-46), subject to the conditions listed on the proposed CUP and the following changes to the proposed General Provisions, Parcel Descriptions and Proposed Uses:
 1. Change language in General Provision #4: (a) No portable signs or billboards will be permitted., (b) The applicant shall provide proof of ownership and maintenance responsibility for any sign placed in the 30-wide access easement. The sign will be a monument type, per the NR Neighborhood Retail (“NR”) standards and it’s location must be approved by the Traffic Engineer., (c) Temporary signs shall be per the sign code. Add: (d) No flashing signs (except for signs showing only time temperature and other public service messages) rotating or moving signs, which create the illusion of movement. (e) Window displays are limited to 25% of the window area. (f) No signs allowed on the back or sides of buildings or any side of a building that is facing residential zoning. (g) No back lit canopies.
 2. Change the language in General Provision #5 to include: Drainage improvements will be guaranteed at the time of the final plat. The perpetual easement for ponding and overland flowage, located along the eastern portion of the subject property shall be deeded to the City. The CUP will provide an ingress and egress easement to the drainage deeded to the City. Eliminate the “drainage concept”, should be “drainage plan.”
 3. Change the language in General Provision #13 to: “limited to 24 feet in height.” and no lights within the CUP’s 35-foot setbacks.
 4. Change the language in General Provision #13 to: All trash receptacles shall be screened with similar material as the buildings.
 5. Revise General Provision #15: “screening materials shall be of a similar material as the buildings.
 6. The minimum compatibility height standards as well as the CUP standards for the minimum 35-

foot setback and the 6-8-foot tall screening wall will be observed.

7. All property included within the C.U.P. and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed, unless a platting extension has been granted. The ordinance establishing the zoning change shall not be published until the plat has been recorded with the Register of Deeds.
8. The ordinance establishing the zoning change shall not be published until the applicant records a document with the Register of Deeds indicating this tract (referenced as DP-318) includes special conditions for development.
9. The resolution establishing the amendment and the zone change shall not be published until the replat has been recorded with the Register of Deeds. Prior to publishing the resolution establishing the amendment and the zone change, the applicant shall record a document with the Register of Deeds indicating that the replatted portion of the CUP (referenced as DP-28) includes special conditions for development on this property.
10. The applicant shall submit 4 revised copies of the amended C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Abutting the north side of the subject property is undeveloped SF-5 zone land, some of it owned by the applicant, with most of it identified as being in the FEMA (Cowskin) floodway and flood zone. Northwest of the subject site and abutting the just mentioned undeveloped land is a single line of SF-5 zoned single-family residences (most built in the late 1950s) that face Maize Road. Abutting the west side of the subject property is a LC zoned bank and an undeveloped lot. Where the LC zoned bank property ends and the SF-5 zoned residences begin, marks the north end of the subject property. Abutting the south side of the subject property is an LC zoned Quick-Trip convenience store & its enclosed automated car wash. The bank and the Quick-Trip development have all been built since 2001. The subject property has frontage and proposed access onto the Kellogg frontage road, which is one-way west. East of the subject property and across the Cowskin is developed, SF-5 zoned, single-family residential subdivisions. There is a thick grouping of trees between the Cowskin (on its east bank, off of the subject property) and these single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property used to be a farmstead and is now scraped clean and a significant portion of it is identified as being in the FEMA floodway and flood zone. The floodway and flood zone spread out from both sides of the Cowskin Creek, which flows through or runs against an eastern portion of the subject property. The city has recently made improvements to this area around the Cowskin to improve the drainage around and through the Cowskin, which has been prone to flooding, causing repeated damage to residences and properties around it. The drainage considerations (due to the Cowskin) could limit the size of commercial or residential development on the subject property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: A CUP is intended to protect the public safety, convenience, health and general welfare through standards and provisions that establish requirements as to lot coverage, height, setback, and screening that permit review, of the size shape and location of such facilities with due regard to the tract as a whole so as to

ensure the development of facilities with proper ingress and egress, parking drainage facilities, screening, sign control, environmental control and other requirements and amenities. Staff cannot support the applicants' request to waive of the minimum CUP and compatibility standards for building height, the 6-8-foot tall screening wall and setbacks. Even though the applicants currently own a portion of the abutting northern SF-5 zoned properties, property can change ownership and to waive the above noted minimum CUP and compatibility standards would have a negative impact on any subsequent owners of the abutting northern properties and the adjacent single-family residences.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed LC zoning is more than what is recommended by the Functional Land Use Guide, which confines the subject property's commercial use to its Kellogg frontage. The relatively recent (2000) rezoning to LC of the bank lot and the undeveloped lot along Maize Road makes the proposed LC zoning of the subject property behind them a possibility. However, any commercial development on the subject property would mean more impervious surface, which mean more runoff into the flood prone Cowskin.
5. Impact of the proposed development on community facilities: The proposed development will result in increased traffic on this portion of Kellogg and Maize Road. Drainage impacts are critical as a significant portion of the subject site is identified as being in the FEMA floodway and flood zone. The floodway and flood zone spread out from both sides of the Cowskin Creek, which flows through or runs against an eastern portion of the subject property. The City has recently made improvements to this area around the Cowskin to improve the drainage around and through the Cowskin, which has been prone to flooding, causing repeated damage to residences and properties around it.

BILL LONGNECKER, Planning Staff presented the Staff Report.

LONGNECKER referenced the revised CUP provided by the agent at today's meeting as a hand out that was received after the MAPC's packet had been sent out. He referenced Item #1 in the staff report noting that staff was okay with (a) the billboard sign along Kellogg, as there were billboards already in along Kellogg, south of the site; (b) noted that a monument sign as permitted in the LC zoning district was ok along the Maize frontage, as opposed to the NR standards for a monument sign, noting that the bank site located on the west side of the subject site had recently been rezoned to LC, to allow LC signage. He stated that the rest of those conditions on the monument sign along Maize Road should remain as listed in the staff report. He also stated that LED signs along Kellogg and Maize were ok, as permitted in the LC zoning district.

JOHNSON in @1:40 P.M.

LONGNECKER referred to Item #2 in the Staff Report and commented that in 2004, Public Works acquired a perpetual easement for ponding and overland flowage, located along the eastern portion of the subject property (and beyond), where the Cowskin Creek flows through it or abuts it. The easement was obtained as part of the City's efforts to lessen the risk of flooding through the Cowskin Creek drainage area. He noted that Public Works wanted the easement deeded to the City. He also noted that Public Works wanted an ingress and egress easement provided to the drainage area. He said drainage improvements would be resolved during the platting process, but noted that drainage would have an impact onto the size and configuration of the site. He noted that the Cowskin drainage area was prone to flooding as recently as last spring (fall), even after improvements had been made to the drainage basin including removal of the railroad bridge located south of the site to improve water flow. He said staff would like to keep the recommendations in Item #2, as they were written in the report.

LONGNECKER referred to Item #6 and commented that the applicant was requesting a waiver of setbacks, compatibility height standards and masonry screening wall. He referred to the aerial of the area, showing the site and surrounding properties. This area included the area of the perpetual easement, the floodways and flood zones on either side of the Cowskin Creek. He said these provided a large area, which separated the residential properties to the east from proposed development on the site. With this consideration of separation and the large stand of existing trees between those houses and the site, the applicant wanted to waive the CUP's solid screening requirement along the site's east side to take advantage of the vista onto the Cowskin, and staff agreed for the east side only. He noted that there was single family residential development immediately northwest of the proposed site and stated that they needed to be provided some type of protection. He suggested that an agreement be entered into to allow the applicant a waiver of the screening requirement for 3 years or until the abutting north property was rezoned where the site abuts his property to the north. The applicant/owner of the subject site may apply for a one year extension, every year thereafter until the rezoning of the abutting north properties to non-residential zoning. Approved evergreens, a minimum of 5 feet tall, will be planted every 15 feet, along the west 200 feet on the north property line (Parcel 1), to provide the equivalent of solid screening (this is an exception to General Provision #16, the landscape provision), until such time as when the required CUP solid screening is put up. Waive the solid screening along the east side of Parcels 3 where it abuts an unplatted, SF-5 Single-family Residential ("SF-5") zoned tract, owned by the City of Wichita, which fronts Kellogg Street, and where it abuts the Cowskin Creek.

HILLMAN commented on the nature and type of the property and asked wouldn't a berm on the north do a better job of protecting homes and helping contain flooding, more than just a wall.

LONGNECKER responded that you can't put up obstructions in the floodway or flood zone. He said a wall, berm or landscaping is considered an obstruction and must get the approval of the Army Corp. or Engineers. He briefly reviewed the map referring to 200 feet of screening along the west side of the site, which he thought was outside the floodway and flood zone.

HENTZEN commented that he was fairly familiar with this area because he lived on Westlynndale Street for 10 years. He said he recalled that the City brought a law suit against Sedgwick County to keep them from cleaning out the floodway south of Kellogg to the Arkansas River. He asked if the City has cleaned out the waterway south of the railroad bridge.

LONGNECKER introduced Scott Lindebak from Storm Water Engineering and said he could address the drainage issues.

SCOTT LINDEBAK, PUBLIC WORKS, STORM WATER ENGINEERING commented that in 1989 the Cowskin Sewer Main was constructed to serve west Wichita. He said the City utilized that project to make further drainage improvements by creating the Pawnee Prairie Overflow Bypass, which he explained is basically an overflow channel similar to the "Big Ditch" where the channel itself isn't capable of carrying all the water but is allowed to bypass into an area east of the Cowskin Creek. He said the bypass channel is only a mile long between Pawnee and Kellogg. He said the channel drains itself from Pawnee through the Airport and into the Wichita-Valley Flood Control Project. He said this area is all within Sedgwick County and he understood that the County is allowed to maintain areas within the ordinary high water mark. He said most of this area is located on private property. He said he would have to defer to Jim Weber, County Public Works, on the specifics of what is allowed, since that area is outside the jurisdiction of the City of Wichita. He concluded by stating that the City checks the overflow channel on a monthly basis and added that the Department of Park and Recreation has responsibility for cleaning the channel.

HENTZEN asked if there has been flooding out there and asked for the history of the last 10 years.

LINDEBAK said there have been numerous flooding events including 1999 and September, 2008 where a neighborhood just east of this site had to bring in portable pumps to pump out the area in and around Westlynndale and Dubon behind the levy. He said there is a lot of runoff because this area is at the downstream end of over a 100 square mile drainage basin where the Calfskin and Cowskin Creeks join and drain a significant area of northwest Sedgwick County. He said there will always be more run off, larger rain events and more flooding. He said the City is looking into not allowing anymore projects or development that will eliminate flood zone or flood plain land in west Wichita. He said one option being explored was possible buyout options and funding provided by Kansas Emergency Management to purchase homes in the flood plain or flood zone. He said in the meantime, the City has constructed a 300 foot “over bench” on the east side of the Cowskin Creek between Kellogg and Maple and installed a lot of rainfall gauges in the basin to monitor the flooding and warn people as appropriate. He said they also dispatch Public Works employees and provide sand bags at specific sites that City staff know flood.

HENTZEN said he noticed the work done between Maple and Kellogg and thanked staff for their efforts. However, he said until the water gets to where it is supposed to go, there is going to be flooding in the area. He mentioned that a lot of fill has been put in the area.

MITCHELL asked if **LINDEBAK** agreed with the information and provisions set up in the floodway fill concept drawing provided by the applicant/agent.

LINDEBAK said based on information he received in the hydraulic model, it shows no adverse impacts on drainage. But, he said prior to receiving the City’s official approval, the diagram will be reviewed by the Division of Water Resources (DWR) and the Federal Emergency Management Agency (FEMA) to insure that the plan also meets their requirements.

MITCHELL clarified that can be taken care of at time of platting.

LINDEBAK said that was correct.

FOSTER asked if the “hard armor” recommended in the diagram will come into the analysis to alleviate further flooding in the area. He referred to section AA, flood plain fill and retaining wall.

LINDEBAK said the retaining wall will need to be put in place to provide the necessary conveyance. He said the applicant is attempting to maximize use of the property and in order to keep existing velocities matching existing conditions and the same flood elevation; a retaining wall is needed to separate the fill from the actual channel. He concluded by saying that they have accounted for that structure in the analysis.

TIM AUSTIN, POE AND ASSOCIATES, AGENT FOR THE APPLICANT said they were aware that drainage would be an issue with the application. He commented that Brice Barcus with ASM Engineering, who conducted the flood study, and Jay Maxwell, one of the partners from MAIZE 54, LLC, were present to answer any questions. He referred to a PowerPoint presentation of the items that were provided as hand outs at today’s meeting concerning drainage. He said it sounds like the applicant is in agreement with staff on the zoning side of the application with the exception of the compatibility setback issues, which they feel aren’t applicable.

AUSTIN reviewed an aerial of the area, commenting that MAIZE 54, LLC owned a house on Maize Road and added that there were several other properties that they are in negotiations with the site’s owners for future development as commercial properties. He said with the traffic on Maize Road, those properties are not desirable as residences. He said fill in this area was permitted through the Division of

Water Resources by the previous owner. He added that the area also includes a spotted skunk wildlife habitat preserve. He said they would like to clean out the trees and improve efficiency of the water flow in that area, but could not without disturbing the skunks. He also mentioned the work done by the Army Corp. of Engineers to the north of the area which he said has made a significant improvement in drainage. He said there are two issues which need to be discussed and they are site drainage issues normally taken care of at platting and the overall basin drainage issue of the Cowskin, which includes 100 square miles of area that drains to this point. He said although they can't do anything to improve the drainage issues to the south of Kellogg, they don't want to do anything that will negatively impact the area either. He said their drainage study and development contemplates fill in the area, building a retaining wall, thus increasing the buildable area, but not having an impact on drainage or the capacity of the Cowskin to carry of flood water through this location. He referred to a diagram of the existing channel, which he said accompanied their FEMA application and was reviewed by the City. He referred to the map table which was a cross section of the Creek in this location. He said they are improving on the base flood elevation (BFE) and lowering it by ½ foot. He said Storm Water Engineering also asked for additional criteria not required by FEMA or DWR in consideration of the residences at Miles Lakewood Village so as not to increase water velocities. He said the table indicates they will decrease the water velocities through that area, which will minimize scour and anything that might affect the levy through Miles Lakewood Village. In addition, the City requested that the flood capacity be maintained at its current level as a minimum so as not to push more water onto the Miles Lakewood Village levy. He said because they have reduced the BFE, he said they have reduced the area of conveyance on the east side along the Miles Lakewood Village levy. He said more water will be conveyed on west side of the Cowskin Creek. He said based on their hydraulic study, they feel that this development will improve the drainage conditions in this area. He referred to the retaining wall and mentioned that they submitted a petition to the City Council for \$700,000 that was approved last Tuesday, so that was an approved drainage project but they cannot build the wall until they get their final approvals from FEMA, DWR, the Army Corp of Engineers.

AUSTIN concluded that he has met with the President and Vice President of the Miles Lakewood Village HOA, as well as some of the residents of the Dell. He said they want to be good neighbors and mitigate any nuisances. He said as far as the 35-foot setback on the west 200 feet of the north property line, they could put in berming as screening as long as it does not affect the flood plain or flood flows. He said they don't want to create drainage issues to the west of the location.

MITCHELL referred to item #2 and asked if Austin would agree to change the term "drainage concept" to "drainage plan."

AUSTIN said okay. He said that reminded him that Storm Water Management had asked for a property drainage easement or drainage reserve to be dedicated to the City and added that they are not necessarily opposed to that; however, they want to create some walking paths so that people can enjoy the creek while visiting the fun Center/family entertainment venue they plan for the location. He said they feel they can address those issues and access and maintenance at platting.

FOSTER asked about the extension to the east and asked if that was for drainage purposes?

AUSTIN said that area will be used for drainage and visibility and so they can keep the area maintained. He mentioned that the spotted skunk reserve was just north. He said the area **FOSTER** was referring to would be part of the dedication to the City.

FOSTER asked about the perpetual easement and whether it would be private or public access.

AUSTIN said they believe they can provide access at a couple of different locations on the north and south ends of the property.

FOSTER asked about the type of ponding.

AUSTIN said the ponding and overflow easement is an easement that was obtained by the City when Don Coleman owned the property to maintain the waterway and conveyance for the Cowskin Creek. He said where the retaining wall is located is the line where the applicant would plat the drainage easement or reserve and dedicate it to the City. He said this area lies further west of the ponding and overflow easement. He said the easement as it exists today does not line up with the retaining wall.

FOSTER asked if there was sufficient ground for a 35-foot landscape buffer east to the flood plain.

AUSTIN commented that staff's concern was with a particular house on the west edge of the property which was being marketed as a commercial property. He said they would be receptive to protecting that property on the westerly edge; however, they did not intend to extend landscape and buffering to the east because they would have to move the building south and it would also affect parking. He said it doesn't make sense to extend the setback all the way to the east because MAIZE 54, LLC owns the property to the north. He said any setback would benefit MAIZE 54, LLC so they would be happy to waive the setback requirement.

HILLMAN clarified that they would be moving the dirt from the east side of the retaining wall and depositing it on the west side of the wall.

AUSTIN said that was correct and added that it was the same grading operation that the Army Corp. of Engineers did to the north.

HENTZEN asked if the Army Corp. of Engineers or the City of Wichita certified that what they have done has eliminated the flooding problem in this area. He commented that the area has been flooding for the last 100 years.

AUSTIN commented that this is a complex issue. He stated that what they are proposing is not going to affect anything that happens upstream from the area.

TAPE 1, SIDE 2

He mentioned the 12 inch rain in September and said that pumping was required for localized flooding because of the heavy rainfall. He said he understood the water did get to the top of the levy and exceeded the 1998 Halloween flood in some locations, so he thought the work that has been done has helped. But he said you would have to understand the whole dynamics between the two storm events.

MARK CASSELL, 1311 BRIDGEWATER, PRESIDENT OF THE OF THE MILES LAKEWOOD VILLAGE HOME OWNERS ASSOCIATION he said they have 3 issues which were volume, elevation and structure. He said volume-wise there is a new pooling of flood waters in the northern three fourths of this section. He said water flows down hill and that this proposal is bringing in that flood plain 300 feet. He said in September they had flooding and were pumping rainwater into the Cowskin Creek, which they understand is going to get smaller and higher. He said they can't see how this proposed plan can handle the volume that it presently has. He said he didn't care how high you stack it, water it is still going to have to flow through the area. He said the elevation is also a concern because their dike height is going to be at 1317 feet and said the street levels are at 1313 feet. He said they have built dikes at their own expense and added to them, and pumped out water at their own expense also. He said the dikes are only about 8-10 feet tall, 30 years old and riddled with roots. He said when they pumped during the last storm, they could see water percolating. He mentioned their concern about 30 year old earthen dikes, full

of trees on one side and a totally in-filled retaining wall on the other side, and asked who is going to lose. He requested that the area be analyzed against old flood maps. He said the 1994 map shows the west part of this development lower than their street levels. He requested that staff review historical maps and then determine flood capacities. He said they would like to maintain or improve the flood capacity even though it did not serve them well in 1998, 1999, 1978, and 1955. He concluded by stating that the flood plain is conservative and needs to be maintained.

CORY SELL, 10401 RINGER DRIVE said he lives directly across from the Quick Trip and has the same concerns about flooding voiced by Mr. Cassall. He said he didn't know how putting more structures in the area will help the water. He said his main concern is traffic. He said so many people turn around in his driveway all day, every day because they can't get out of Quick Trip to get on Kellogg. He said more traffic and more activity in the area is going to cause more safety hazards for his kids playing in driveway. He said he was also concerned about what was going to be located in the area. He said he can't imagine that more traffic is going to help anything.

AUSTIN said as far as traffic is concerned, they would like to relocate the driveway within the CUP further to the east which they feel will help people turning south to get onto Kellogg. In reference to Mr. Cassell's comments, he said the height of the dike is 1317 based on their survey which is the same height as their wall. He said they are actually increasing the ability of the Cowskin to handle floods. He said they feel like they have addressed the flooding concerns. In addition, he reminded the MAPC that the City, FEMA and DWR have reviewed their drainage plan, and that it will be reviewed by the Army Corp. of Engineers as well. He said drainage is important; however, this is about land use and the appropriateness of this property to be zoned Limited Commercial. He said this property meets the criteria as set out by the Comprehensive Plan and goals of the City.

FOSTER asked what the general BFE in the area was.

AUSTIN said the BFE was 1315 feet, according to FEMA flood maps.

MARNELL asked if the applicant agreed to the changes in condition #1 with regard to billboards.

AUSTIN said yes, to allow two billboards on the south and the LED sign, which he thought was allowed by code.

HILLMAN referred to Item #2 and asked who would guarantee the drainage conditions at the time of the final plan.

LONGNECKER said the property owner guarantees improvements.

FOSTER asked if that drainage analysis would include some of the concerns regarding the resultant flows so that the area is not in a worse condition when everything is all said and done.

LINDEBAK said the flows being used are FEMA flows that have been evaluated through a restudy by a local consultant completed in the 1990's. He said the discharges will not change as a result of this development. He said the water from this site will leave the basin before the peak flow from the Cowskin. He said it typically takes half a day to a full day for the Cowskin to react.

HILLMAN mentioned the 3 foot difference between the existing berm structure on the east and the proposed retaining wall on the west and asked if it was a difference in surveying techniques.

LINDEBAK said he would have to take a more detailed look to answer that question because he didn't have the topography in front of him. He asked **MR. HILLMAN** to get with him after this meeting.

HILLMAN said since the drainage is an issue of concern to some of the surrounding homeowners as well as some of the members of the commission, he suggested that the item be postponed until additional information is provided about height and what the Army Corp. of Engineers would like to do to protect the homeowners to the east.

MOTION: To defer the case.

HILLMAN moved, and the **MOTION** died due to lack of a second.

MOTION: To approve subject to staff recommendation and additional information provided by staff, the Storm Water Engineer and the applicant/agent.

LONGNECKER clarified that the motion included the staff recommended waivers, with the proposed conditions, of the compatibility setbacks, masonry wall requirement including the 3 year period to address the masonry wall and landscaping on the west 200 feet of the north side of the site, with the suggested landscaping.

MITCHELL moved, **MARNELL** seconded the motion, and it carried (10-2). **HENTZEN** and **HILLMAN** – No.

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5. **Case No.: ZON2009-01** – Norma Hecox (owner); Pamela Ball (applicant); Dan Unruh (agent)
Request City zone change from OW Office Warehouse to B Multi-family Residential on property described as:

The North 358.83 Feet of Lot 1, the Plaza at Cherry Creek Hills, Wichita, Sedgwick County, Kansas, EXCEPT that part described as follows: Beginning at the Northwest Corner of said Lot 1; thence S00°00'00"W along the Easterly most West Line of said Lot 1, 168.91 Feet; thence S89°43'00"E parallel with the North line of said Lot 1, 269.02 Feet; thence S52°18'36"E, 89.42 Feet; thence S89°43'00"E parallel with the North Line of said Lot 1, 146.29 Feet to a Point on the East Line of said Lot 1; thence N27°04'54"W along the East Line of said Lot 1, 251.36 Feet to the Northeast Corner of said Lot 1; thence N89°43'00"W along the North Line of said Lot 1, 371.65 Feet to the Place of Beginning. Generally located on the south side of Pawnee Avenue and east of Rock Road.

BACKGROUND: The applicant is requesting a zone change from OW Office Warehouse ("OW") to B Multi-family Residential ("B"). The OW district does not permit residential or church uses. The application area contains approximately 2.0-acres with 150 feet of frontage located along Pawnee Avenue, approximately 1,000-feet east of Rock Road. The subject site is currently undeveloped and the applicant is seeking this rezone for the proposed construction of a church.

Property adjoining the west side of the site is zoned B and is developed with a large apartment complex with access off of Rock Road and Pawnee Avenue. The property to the north of the application area is zoned OW and is currently undeveloped. Property to the south is zoned OW and is currently undeveloped. The property east of the subject site, across Pawnee Avenue, is zoned MF-18 Multi-family Residential ("MF-18") and TF-3 Two-family Residential ("TF-3"), and is developed with single-family and multi-family residences.

Any development on the subject property will be required to meet access management regulations, all compatibility setback, height, noise and design standards, the Unified Zoning Code's (UZC) landscaping, screening and any other applicable codes and development standards.

CASE HISTORY: The subject property is currently platted as part of Lot 1, Block 1 of the Plaza at Cherry Creek Hills Addition. The Plaza at Cherry Creek Hills Addition was recorded with the Register of Deeds July 30, 1999.

ADJACENT ZONING AND LAND USE:

NORTH:	OW	Vacant
SOUTH:	OW	Vacant
EAST:	TF-3 / MF-29	Single-family / Duplex / Quadraplex
WEST:	B	Apartment Complex

PUBLIC SERVICES: All public services are available at the subject site. Pawnee Avenue is a four-lane minor arterial with a 100' right-of-way with approximately 28,000 Average Daily Traffic (ADTs) according to the 2007 Traffic Volume Map. Directly to the west of the site, Rock Road is a four-lane principal arterial with a 150' right-of-way with 31,853 ADTs. The subject site will have access off of Pawnee Avenue.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies the site as appropriate for "Employment / Industry Center" type uses. The employment/industry center recommendation was based upon the 1994 Air Installation Compatible Use Zone (AICUZ) study for McConnell AFB, and the property remains within the "Maximum Mission Area" identified by the Joint Land Use Study. The "Employment / Industry Center" category encompasses areas that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes: manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The Unified Zoning Code defines the B zoning district as generally compatible with the "Urban Residential" designation of the Comprehensive Plan. The application area is also consistent with the "Public/Institutional Locational Guidelines" and "Residential Locational Guidelines" of the *Wichita-Sedgwick County Comprehensive Plan*. Approval of B zoning creates the potential for the development of additional residential uses in close proximity to the air base that could generate noise complaints that can be considered in future base closure evaluations. Churches are permitted in the SF-5 district, and if it is certain that a church is to be built on the site, the SF-5 district may be more appropriate than the B district.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request for the B Multi-family Residential ("B") zoning be APPROVED.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Properties adjoining the west side of the site are zoned B and is developed with an apartment complex. The property to the north of the application area is zoned OW and is currently undeveloped. Property to the south is zoned OW and is currently undeveloped. The property east of the subject site, across Pawnee Avenue, is zoned MF-18 Multi-family Residential ("MF-18") and TF-3 Two-family Residential ("TF-3") and is developed with single-family and multi-family residences.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is currently undeveloped and zoned OW. The site could be developed as presently zoned, but

rezoning to B is also not unreasonable, especially since property zoned B adjoins the west property line and other multi-family zone property is located across Pawnee Avenue. The immediate area is currently developed with considerably more multi-family uses than warehouse type uses.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed B zoning would allow similar types of development as already established north, east and west of the subject site. The implementation of the standards of the Unified Zoning Code over the whole site would limit the adverse impact on the surrounding residential developments. However, approval of B zoning creates the potential for the development of additional residential uses in close proximity to the air base that could generate noise complaints that can be considered in future base closure evaluations. Churches are permitted in the SF-5 district, and if it is certain that a church is to be built on the site, the SF-5 district may be more appropriate than the B district.
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 site as appropriate for “Employment / Industry Center” type uses. The employment/industry center recommendation was based upon the 1994 Air Installation Compatible Use Zone (AICUZ) study for McConnell AFB and the property remains within the “Maximum Mission Area” identified by the Joint Land Use Study. The “Employment / Industry Center” category encompasses areas that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The Unified Zoning Code defines the B zoning district as generally compatible with the “Urban Residential” designation of the Comprehensive Plan. The application area is also consistent with the “Public/Institutional Locational Guidelines” and “Residential Locational Guidelines” of the *Wichita-Sedgwick County Comprehensive Plan*.
5. Impact of the proposed development on community facilities: Provided that drainage and traffic access policies are met, community facilities should not be impacted. Other usually provided municipal services are available.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

SHERMAN moved, **MITCHELL** seconded the motion, and it carried (11-0).

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6. **Case No.: ZON2009-02** – Jeffery Niedens (applicant) Request City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential to permit duplex development on property described as:

The South 70 feet of the North 125 feet of the West 500 feet of Lot 4, Central Acres Addition to Wichita, Sedgwick County, Kansas. Generally located west of North Hoover and south of Central (625 North Hoover).

BACKGROUND: The applicant requests TF-3 Two-family Residential (“TF-3”) zoning on a .2-acre site, currently zoned SF-5 Single-family Residential (“SF-5”). The site was formerly developed with a

manufactured home. The site is approximately 8,280 square feet in size with 60 linear feet of frontage along Hoover Avenue; the site will accommodate one duplex. Immediately north of the site is LC Limited Commercial (“LC”) zoned property, under the same ownership as the application area and within the same parcel as the application area. The applicant may develop the LC zoned portion with a duplex as well. Further north are LC zoned commercial uses at the Hoover/Central intersection. South of the site are SF-5 zoned single-family residences. East of the site are TF-3 zoned single-family residences. West of the site is the I-235 corridor.

CASE HISTORY: The Central Acres Addition was platted in 1927; this parcel was split off of Lot 4 at a subsequent date.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Single-family residential, commercial
SOUTH:	SF-5	Single-family residential
EAST:	TF-3	Single-family residential
WEST:	SF-5	I-235

PUBLIC SERVICES: Hoover is a paved local street at this location with a 30-foot half-width right-of-way. All other normal public services are available at the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the *Wichita-Sedgwick County Comprehensive Plan* identifies the application area as “Urban Residential.” The Urban Residential category encompasses all development densities found in the municipality.

RECOMMENDATION: The immediate neighborhood is a mixture of TF-3 and SF-5 zoning, with LC along the Central corridor. The residential neighborhood is primarily single-family with a few existing duplexes within two blocks of the application area. The proposed zone change is consistent with the zoning pattern in the immediate area, with most residential lots north of Newel Street zoned TF-3. Likewise, the request is in conformance with the Land Use Guide of the Comprehensive Plan.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED, subject to separating the application area from the remaining LC zoned parcel with a lot split.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the site is LC zoned property owned by the applicant, and an LC zoned single-family residence. Further north are LC zoned commercial uses at the Hoover/Central intersection. South of the site are SF-5 zoned single-family residences. East of the site are TF-3 zoned single-family residences. West of the site is the I-235 corridor.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with a single-family residence as it is currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and two-family development should have no effects on surrounding single-family residences. The proposed zoning will serve as a transitional buffer from the more intense LC zoning north of the site and the SF-5 zoning south of the site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide” of the *Wichita-Sedgwick County Comprehensive*

Plan identifies the application area as “Urban Residential.” The Urban Residential category encompasses all development densities found in the municipality.

5. Impact of the proposed development on community facilities: The proposed duplex development should have marginally noticeably greater impact on community facilities than development that could take place under the current single-family zoning.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

SHERMAN moved, **MITCHELL** seconded the motion, and it carried (11-0).

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7. **Case No.: ZON2009-03 and CUP2009-01** – HHH Holdings, LLC (owner); Professional Engineering Consultants, P.A., c/o Rob Hartman Request City zone change from B Multi-Family Residential to LC Limited Commercial and creation of DP-319 Providence Square Commercial Community Unit Plan on property described as:

Reserve C in Ken-Mar Addition to Wichita, Sedgwick County, Kansas, except that part condemned for street in District Court Case Condemnation Case No 84C2124. Generally located north of 13th Street North and west of Oliver Avenue.

BACKGROUND: The applicant proposes to redevelop Ken Mar Shopping Center as DP-319 Providence Square Community Unit Plan, located on the northwest corner of 13th Street North and Oliver Avenue. Total size of the CUP would be 7.51 acres, encompassing the land between 13th Street Oliver Avenue, 14th Street North and Pershing Avenue.

Currently the property beneath the existing buildings and some of its surrounding parking field is zoned LC. A band of B Multi-Family Residential (“B”) borders 14th Street North and a patch of B zoning is located on the southwest corner of the proposed CUP at the intersection of 13th Street North and Pershing Avenue. The applicant has requested that the entire CUP be zoned LC.

A TIF district for the Ken Mar Center Redevelopment Project (Providence Square) was approved for the site January 6, 2009. The TIF requires redevelopment of the shopping center in order to utilize TIF funding to upgrade the parking lot, site lighting and access points onto the site. The redeveloped shopping center would consist of renovation of Parcel 1 (5.19 acres), including the two existing buildings, plus addition of Parcel 2 (0.48 acres) and Parcel 3 (0.67 acres) as freestanding uses along 13th Street North and Parcel 5 (0.46 acres) as a freestanding use along Oliver Avenue. Parcel 4 (0.71 acres), located at the corner of 13th and Oliver, currently has a small retail building (originally a gas station) but could be redeveloped with a new structure in the future.

Proposed uses are those permitted by right in the LC zoning district except for the following prohibited uses: correctional placement residences, vehicle storage yards, general vehicle repair, outdoor storage (as a separate use), taverns, nightclubs, asphalt or concrete plants, sexually oriented businesses and adult entertainment as defined by City Code. No service stations, convenience stores with gas islands or restaurants with drive in or drive through facilities would be permitted within 200 feet of residentially zoned property. Any use for which a conditional use permit would be required under LC zoning would require a CUP amendment. Multi-family residential use (such as apartments or lofts) would be a permitted use above the existing retail buildings on Parcel 1, but all residential uses would be prohibited

on Parcels 2-5. The ability to add the residential component to Parcel 1 probably hinges on the ability to comply with parking requirements.

The CUP does not propose specific architectural standards, but provided a façade elevation as part of the TIF review. This elevation is included as supplementary documentation as an indication of the general appearance of the center. It proposes consistent landscaping and lighting elements with a height limitation of 28 feet. While this lighting height is taller than typical in close proximity to residential zoning, the lighting would be separated from the closest residences by the street; and the residences are oriented with the side yards rather than front yards across from the development. A photometric plan is attached to demonstrate containment of lighting onto the site and away from the residences to the north.

The CUP would omit the screening wall between the CUP and the residential zoning. Instead, a landscape screening of shrubbery and trees is proposed. In addition, the CUP would be subject to standard Landscape Ordinance requirements, triggered by the scope of the redevelopment. The CUP states that trash receptacles and outside storage would be screened from ground level view, referring to outdoor work and storage areas customarily found as accessory uses to LC principal uses because “outdoor storage” as a principal use is prohibited. A pedestrian plan, and internal site circulation and cross circulation are required by the CUP.

Setbacks vary in width and deviate from standard Unified Zoning Code required setbacks of 35 feet for CUPs along streets. The variations are found on Parcel 1 in those locations where the existing buildings are zero feet from the property line on Oliver Avenue and at certain points on Pershing Avenue for Parcel 1. On the remainder of Parcel 1, the setback increases to 35 feet. Parcel 2 and 5 are currently vacant tracts of land, but also propose reduced setbacks of 10 feet along Pershing Avenue for Parcel 2 and along 14th Street North for Parcel 5, presumably to increase the buildable area on these small tracts. For Parcel 2, it continues the pattern of narrow setback found for both sides Pershing Avenue, where the west side is developed commercially with a narrow side street setback. For Parcel 5, the reduced setback of 10 feet mimics the setback of Dellrose United Methodist Church on the north side of 14th. This reduced setback would serve to narrow down the visual corridor along 14th Street North and provide a more sharply defined corner to the commercial development. The area between the building and the sidewalk would be limited to landscaping. Considering these factors, the reduced setback probably meets the general intent of a development pattern that provides a reasonable separation between the residences (farther west) and a commercial edge to the development. The setbacks on Parcel 4 (corner of 13th and Oliver) are shown as 35 feet although this clips the edges of the existing building. Presumably if the parcel were redeveloped with a new structure, it would adhere to the standard 35-foot setback on this corner.

Maximum building coverage is to be limited to 30 percent for the entire CUP and maximum gross floor area (for commercial uses) would be 35 percent. Maximum building height would be 35 feet for all Parcels except Parcel 1. Maximum building height for Parcel 1 would be 45 feet. The maximum building coverage would be 33 percent for Parcel 1 to correspond with the requirements of the TIF. Residential use would be permitted in excess of this limit, up to 90 units on Parcel 1. This would be a density equivalent MF-18. Coupled with the retail and commercial component, it could encourage a shop/live/work type of environment if the market demand supports this mixed use. With the maximum height of 45 feet, it would allow two stories of apartments on top of the commercial ground level floor, again however the limitation perhaps would be limited by providing parking.

Electronic signs would be restricted to 13th Street North and Oliver Avenue. The CUP prohibits moving and rotating signs, signs with moving lights, portable signs, off-site signs and billboards. Window signage is restricted to 25 percent of window area. No specific building wall signage restrictions are included beyond the general restrictions on electronic signs and signs with movement. The number of signs (when considering the two requested 30-foot high signs that count as two sign locations) exceeds

the Wichita Sign Code allowances by one sign location on the 13th Street North frontage and one sign location on the Oliver Avenue frontage. Additionally a 100-foot spacing rather than 150 feet per Wichita Sign Code is requested.

Ken-Mar Shopping Center was built in 1956. The buildings are on property zoned LC, but the majority of the parking field is located on property zoned B. A church on property zoned SF-5 is located directly north of the site, and single-family residences on property zoned SF-5 are located north and northwest of the site. A convenience store, zoned LC, and more residences, zoned GO, TF-3 and SF-5 are located directly east of the site. A service station and a post office substation are to the southeast and more businesses and a restaurant are located directly south, all on property zoned LC. The area to the west includes some vacant retail stores and a large furniture store and furniture warehouse, with a mix of GC General Commercial (“GC”), OW Office Warehouse (“OW”), LC and GO zoning.

CASE HISTORY: The property is platted as Reserve C, Ken Mar Addition, recorded May 9, 1950, an 80-acre tract primarily for residential development. The land was formerly the Ken-Mar Airpark. The developer, Frank Kessler, requested LC zoning for a 400x400 square on the corner of 13th and Oliver and “RB” for the balance of Reserve C as a buffer from “A” zoning to the north and west. In 1955 the LC zoning was extended through the mid-section of Reserve C to Pershing Avenue. A second addition of LC zoning in 1965 was for expansion of the building currently occupied by a discount retailer (Dollar General), although the expansion was never completed. The airport hangar was located on Reserve A of Ken Mar Addition, which is a block west between Terrace Drive and Belmont Avenue. The airport hangar was converted to Sky Bowl bowling alley in the 1950s, and today is occupied by Furniture on Consignment.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5,	Single-family residential, church
EAST:	LC, GO, TF-3, SF-5	Convenience store, single-family residential
SOUTH:	LC, TF-3	Retail, vehicle repair, restaurant
WEST:	GC, LC, GO, OW	Furniture store and warehouse, vacant commercial

PUBLIC SERVICES: Oliver Avenue and 13th Street North are four-lane arterial streets with left-turn center lanes and right-turn lanes at the signalized intersection. 13th Street North is scheduled for widening to five-lane configuration during 2009-2010. Traffic volumes in 2007 ranged from 15,000 to 17,000 AADTs on 13th and Oliver. 14th Street North is a local residential street and Pershing Avenue is a local street, serving commercial use for the block bordering the site but functioning as a local residential street to the north of 14th Street North.

The CUP shows ten feet of additional right-of-way on 13th Street North and a request has been made for a contingent dedication of ten additional feet of Oliver Avenue and a corner clip at the intersection. The CUP greatly reduces the number of access points onto Oliver and 13th compared to current conditions and in conformance with the Development Plan for the TIF. Oliver is reduced to two full-movement openings into Parcel 1. 13th Street North is reduced to one full movement and one right-in/right-out movement. The full movement aligns with a continuous drive from 13th to 14th between the two existing buildings. Two openings are shown on 14th and three on Pershing Avenue. Parcels 2-5 obtain access from cross-lot circulation from drives on Parcel 1. The internal circulation and pedestrian circulation provide good internal flow of vehicles and pedestrians and connectivity with the street grid.

Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide, Map as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies

this area as appropriate for “local commercial.” This CUP would be in conformance with this guideline. It conforms to **Commercial Goal/Objective B** of “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” It conforms to **Strategy III.B1** of locating local commercial development (neighborhood centers) in areas shown on the Land Use Guide at the intersection of two arterial streets and it is within the area shown for urban expansion. The CUP incorporates provisions conforming to **Strategy III.B.2** of integrating out parcels to planned centers through shared internal circulation, similar landscaping and combined ingress/egress. In conformance with **Strategy III.B.3**, it reduces 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. **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 incorporates provisions related to use, landscape, signage, screening and other features to comply with this guideline. The mixed use residential upper floor component adds a denser, more urban-scale possibility. The property is located along public transit routes, which supports more intensive residential use. The CUP is consistent with the recommendations of the Central Northeast Area Plan.

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

- A. APPROVE the zone change (ZON2009-00003) to LC for the property zoned B.
- B. APPROVE the Community Unit Plan (DP-319), subject to the following conditions:
 1. Provide contingent dedication of ten feet of right-of-way for Oliver Avenue and a corner clip of 20 feet x20 feet.
 2. Allow the reduced setbacks and additional sign locations as requested by the CUP.
 3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 4. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 5. The ordinance/resolution establishing the zone change shall not be published until the platting has been recorded with the Register of Deeds.
 6. 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-319) includes special conditions for development on this property.
 7. 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: Ken-Mar Shopping Center was built in 1956. The buildings are on property zoned LC, but the majority of the parking field is located on property zoned B. A church on property zoned SF-5 is located directly north of the site, and single-family residences on property zoned SF-5 are located north and northwest of the site. A convenience store, zoned LC, and more residences, zoned GO, TF-3 and SF0-5 are located directly east of the site. A service station and a post office substation are to the southeast and

more businesses and a restaurant are located directly south, all on property zoned LC. The area to the west includes some vacant retail stores and a large furniture store and furniture warehouse, with a mix of GC, OW, LC and GO zoning.

2. The suitability of the subject property for the uses to which it has been restricted: The LC zoning is suitable for local commercial use for the majority of the tract, however, the B zoning restricts developing compatible usage along the 13th Street North frontage and reliance of B zoning to provide buffering for the residential neighborhood north of 14th Street North can be accomplished with landscaping and screening requirements rather than zone district designation.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Although the area along 14th Street North would be rezoned to LC, the CUP shows the area as a parking field and without any commercial uses being added nearer to the residences than exist today. The possible development of Parcel 5 would introduce a commercial use nearer to the church and closer to the residences across Oliver Avenue.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide, Map as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “local commercial.” This CUP would be in conformance with this guideline. In terms of conformance with commercial goals/objectives/strategies and locational guidelines, it partially conforms to **Commercial Goal/Objective B** of “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” It conforms to **Strategy III.B.1** of locating local commercial development (neighborhood centers) in areas shown on the Land Use Guide at the intersection of two arterial streets and it is within the area shown for urban expansion. The CUP incorporates provisions conforming to **Strategy III.B.2** of integrating out parcels to planned centers through shared internal circulation, similar landscaping and building materials, and combined ingress/egress. **Strategy III.B.3** seeks to reduce access points along arterial streets; which would be accomplished through alignment of the drive with Garnett Street and following access management for the other access points. **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 incorporates provisions related to architectural, landscape, signage, lighting, screening and other features to comply with this guideline. The mixed use residential upper floor component adds a denser, more urban-scale possibility. The property is located along public transit routes, which supports more intensive residential use. The CUP is consistent with the recommendations of the Central Northeast Area Plan. The reduced setbacks, presumably to increase the buildable area on the small tracts continues the pattern on Parcel 2 of narrow setback found for both sides Pershing Avenue, where the west side is developed commercially with a narrow side street setback. For Parcel 5, the reduced setback of 10 feet mimics the setback of Dellrose United Methodist Church on the north side of 14th. This reduced setback would serve to narrow down the visual corridor along 14th Street North and provide a more sharply defined corner to the commercial development. The area between the building and the sidewalk would be limited to landscaping. Considering these factors, the reduced setback probably meets the general intent of a development pattern that provides a reasonable separation between the residences (farther west) and a commercial edge to the development. The setbacks on Parcel 4 (corner of 13th and Oliver) are shown as 35 feet although this clips the edges of the existing building. Presumably if the parcel were redeveloped

with a new structure, it would adhere to the standard 35-foot setback on this corner.

5. Impact of the proposed development on community facilities: If successful, the development should increase traffic by generating more intensive retail, commercial and perhaps residential use. This increase should be handled by the street network, particularly with the already updated intersection and the planned widening of 13th Street North west of the intersection improvements.

DONNA GOLTRY, Planning Staff presented the Staff Report.

FOSTER asked about architectural standards within the CUP.

GOLTRY noted that staff thought the detail provided on the rendering of the façade would be sufficient.

FOSTER said he didn't notice any labeling or specifications on materials.

GOLTRY said as long as the materials are compatible, consistent and similar in design, staff is satisfied with what has been proposed.

FOSTER commented that if staff was satisfied, then he was satisfied.

CHAIRMAN DOWNING asked if there were any public comments on the item.

MOTION: To approve subject to staff recommendation.

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

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8. Case No.: DR2008-06 - Request Adoption of the "South Central Neighborhood Land Use Plan", as an amendment of the South Central Neighborhood Plan.

Background: The *South Central Neighborhood Plan* was adopted as an element of *The Wichita-Sedgwick County Comprehensive Plan* in May 2006. The South Central Implementation Committee is a group of citizen volunteers that is leading the implementation efforts for the *South Central Neighborhood Plan*. The South Central Implementation Committee submitted a written request that the Metropolitan Area Planning Commission (MAPC) initiate the zoning amendments recommended by the *South Central Neighborhood Plan, May 2006*. On September 11, 2008, the MAPC voted to initiate the requested amendments and assigned the Advance Plans Committee to oversee the South Central Rezoning Initiative.

The Advance Plans Committee held several meetings to discuss the South Central Rezoning Initiative, and on December 4, 2008, voted to endorse the attached *South Central Neighborhood Land Use Plan, February 2009*. The purpose of the Plan is to visually portray and verbally describe future land use and development policies for the South Central Neighborhood. These policies are proposed to be officially adopted as an amendment of the *South Central Neighborhood Plan, May 2006*, and would establish the desired outcomes for future land use and provide a generalized guide for future rezoning decisions. Additionally, the Plan would provide the foundation for the city-initiated rezoning of residential properties in the neighborhood that was authorized by the MAPC on September 11, 2008.

At the MAPC hearing on January 22, 2009, the MAPC received a briefing on the proposed *South Central Neighborhood Land Use Plan, February 2009*, and passed a motion to set a public hearing date of February 19, 2009, to hear formal public feedback on the proposed Plan.

SCOTT KNEBEL, Planning Staff presented the Staff Report.

FOSTER said he would like to compliment staff on a well written document, and said from his standpoint it was easy to read and grasp the information presented. He mentioned several typographical errors, which staff noted for correction.

MITCHELL said he would also like to compliment **KNEBEL**, commenting that it was the best presentation he has ever seen and added that the exhibit was great.

DALE CHURCHMAN, 1357 SOUTH BROADWAY, CHAIRMAN OF THE SOUTH CENTRAL IMPLEMENTATION COMMITTEE said the Committee consists of citizen volunteers who are leading the implementation efforts for the South Central Neighborhood Plan. He said they have worked hard in cooperation with the Planning Department to develop a neighborhood plan aimed at the revitalization of the south central area. He said it is an extensive and long-range program. He said after the plan was adopted approximately 3 years ago, they have been encouraged by successes in implementing several of the initiatives but there is still much to do. He said this proposed land use plan addresses a number of the most important initiatives of the Neighborhood Plan and would move them further along the road of success to reaching the goals of the Plan. He concluded by urging the MAPC'S approval and support on behalf of the Implementation Committee.

MOTION: To approve subject to staff recommendation.

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

NON-PUBLIC HEARING ITEMS

9. Other Matters/Adjournment

CHAIRMAN DOWNING commented that **VAN FLEET** was the MAPC representative on Wichita Area Metropolitan Planning Organization (WAMPO) and that he had information for the Commission.

VAN FLEET referred to a hand out which was a 2-page summary of the Economic Recovery/ Stimulus Package MPO Competitive Funds for 90 and 180 day projects. He commented that the projects with arrows beside them were approved at last Tuesday's meeting of the Transportation Policy body. He said he needed to add an arrow under the "Other" heading of \$550,000 item which was also included in that recommendation. He said the total expenditure is approximately \$22.5 million. He said staff has been working to try to keep abreast of goings on in Washington in response to various ideas as to what a stimulus package might look like. He said the best description he has heard about the policy is "it's like watching a kid's soccer game where one kid kicks the ball in one direction and everyone follows it". He said selections were based on staff recommendations and were projects that met the "shovel ready" definition; namely, fully engineered, land acquisition complete, public notification fulfilled and the only item that is lacking is the funds to do them. He said they are vetted through the Kansas Department of Transportation (KDOT) and represent the comprehensive thoughts of the members of WAMPO, which includes City, County and rural projects. He said he would be glad to answer any questions.

MITCHELL asked about the “Other” category and if it included the transportation and safety plan.

VAN FLEET said he thought there was some concern as to whether the plan is in total compliance with Federal and State regulations.

DIRECTOR SCHLEGEL said one of the federal requirements to maintain the eligibility of local jurisdictions for federal transportation project money is that the WAMPO maintain a long-range Transportation Plan. He said the last Transportation Plan was adopted in 2005 and was in compliance with the Federal Law at that time; however, since 2005 new Federal Legislation has gone into effect including “SAFETEA-LU” and the current long range Plan is not in compliance with that legislation. He said the Plan cannot be amended without making it first compliant with current Federal Law, which was a long, involved process. He said the State had a project that they were keenly interested in having funded through the Stimulus package which was the 47th Street and I-235 project. He said this project is on their list of projects to come out of the State’s allocation of the stimulus money, but had not been included in the 2005 Plan. He said WAMPO has been going through the process to make the current Plan compliant. He said at the March meeting they will amend the Plan to include the 47th Street – I-235 project among others so that it will be eligible for Federal stimulus money. He said in addition, by 2010 a new updated Long Range Transportation Plan is required and staff is in the process of accomplishing that by mid-2010. He said the new name of Long Range Transportation Plans (LRTP) under Federal Law is Metropolitan Transportation Plan (MTP). He said there was also discussion concerning accelerating completion of the MTP prior to mid-2010; however, in order to do that, outside consultants would need to be hired. He said several of the policy board members would like the plan done sooner, and that is why money was put in the “Other” category.

MITCHELL asked for clarification that Metropolitan Transportation does not refer to Metropolitan Transit.

DIRECTOR SCHLEGEL said no, it refers to the long range transportation plan for the whole WAMPO planning area. He added that one of the Federal requirements under SAFETEA-LU is that each Metropolitan Planning Organization has a Safety Plan in place and that will become a major factor in how they choose which projects will receive federal funding. He said they currently do not have a Safety Plan in place.

MITCHELL clarified that safety had to do with traffic, not terrorists.

DIRECTOR SCHLEGEL said this is not about homeland security, but traffic safety issues. He also reported that those decisions were made prior to the Bill being passed. He said now that the Bill has passed, they know a little more about what the rules will be. He said they were working under the assumption that MPO projects would have to be underway and money being spent within 90 days, which is a very short time frame. He said they now know they have up to one year, but he doubted the Policy Body will want these to go on for one year. He said now that they have more time, he believes more projects will be eligible for consideration. He said the projects that were selected were ones that could be “shovel ready” within the 90-day time period. He said the list will be reconsidered at the March WAMPO meeting to include other projects that were on 180-day list.

HILLMAN asked for feedback on how this breaks out and if the Federal government picks up 100%, 80%, 70%, 50% of the tab and what this does to the City’s budget.

DIRECTOR SCHLEGEL said under the Stimulus Bill projects are eligible for 100% federal funding. He said there is no requirement for the 20% local match as with WAMPO funds. He said the MPO Policy Body may still want to require a 20% local match to keep the playing field level in terms of the normal

allocation of MPO funds and to stretch the dollars further. He said that decision will probably be made at the March meeting, whether any project that gets Stimulus money will receive 100% Federal funding or an 80%/20% split. He added that they can't use Federal Funds to replace State funding on any projects, but it can be used to replace local or other federal funding.

HILLMAN asked how this will affect the I-235 and 47th Street bridge project.

DIRECTOR SCHLEGEL said the Stimulus will provide new funding for a project that otherwise wouldn't be funded.

ANDERSON asked if these projects normally occur within the City's Capital Improvement Program (CIP) budgets and asked with this program, could the projects be removed from the CIP and be funded by this source.

DIRECTOR SCHELGEL said yes.

MARNELL said previous WAMPO funding provided approximately \$10 million a year. He asked how much this Stimulus Bill would provide.

DIRECTOR SCHELGEL said they haven't heard officially, but it was estimated in the range of \$16 million using the established formula.

MCKAY commented that the program is not as simple as it sounds, and that there are State and Federal regulations that must be adhered to.

DIRECTOR SCHLEGEL agreed and commented that there are a lot of strings attached to the funding.

The Metropolitan Area Planning Department informally adjourned at 3:00 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 _____, 2009.

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

(SEAL)