

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

September 11, 2008

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 11, 2008, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: M.S. Mitchell, Chair; Don Anderson, Vice Chair; David Dennis; Darrell Downing; David Foster; Bud Hentzen; Hoyt Hillman; Bill Johnson (in @1:47 P.M); Ronald Marnell; John W. McKay, Jr.; Debra Miller Stevens and G. Nelson Van Fleet. Michael Gisick and Don Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Jess McNeely, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner and Maryann Crockett, Recording Secretary.

1. Approval of the August 21, 2008 MAPC meeting minutes:

MOTION: To approve the August 21, 2008 Minutes, as amended.

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

2. Election of Chairman and Vice Chairman.

MOTION: To nominate **DARRYL DOWNING** for Chairman and **G. NELSON VAN FLEET** for Vice Chairman.

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

DOWNING in the Chair.

3. PUBLIC HEARING – VACATION ITEMS

3-1. VAC2008-24: County vacation request to vacate a portion of Washington Avenue and Cashel Street in Clonmel, Kansas.

APPLICANT/AGENT: Catholic Diocese of Wichita (owner/applicant), c/o Karl N. Hesse (agent)

LEGAL DESCRIPTION: Generally described as:

Washington Avenue

That portion of Washington Avenue lying west of the east line of Cashel Street extended to the north line of Washington Avenue and east of the east line of Orchard Street, as platted in Wall's Addition to Clonmell, Sedgwick County, Kansas;

along with,

Cashel Street

That portion of Cashel Street lying north of the north line of the alley north of Church Street as platted in Wall's Addition to Clonmell, Sedgwick County, Kansas.

LOCATION: Generally located northwest of the K-42 – 71st Street South intersection (County) (BoCC #3).

REASON FOR REQUEST: Expand existing cemetery.

CURRENT ZONING: The site includes platted, undeveloped public street rights-of-way. All abutting properties are zoned RR Rural Residential ("RR").

The applicant is requesting the vacation of the described portions of the platted, unimproved public street rights-of-way. As the applicant has noted about this small, isolated, rural county subdivision for a town, the unimproved, platted streets "have never been used for vehicular or pedestrian traffic." In fact the only development in the subdivision appears to be a church, a cemetery and a civic club. The applicant owns the cemetery that abuts half of the described rights-of-way. The cemetery will expand into the vacated rights-of-way and there is an associated Conditional Use, CON 2008-35, for that expansion. A part of the expansion of the existing cemetery includes an agricultural field located on the north side of Washington. This field is owned by the only other property owner of the subdivision and his properties abut the other half of the described rights-of-way. That being noted, the applicant needs the signature of that other abutting property owner. There is no public water or sewer and the site is located outside of a rural water district. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the described rights-of-way. The Walls Addition to Clonmell appears to have been recorded with the Register of Deeds in 1907.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, the Traffic Engineer, Fire, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate portions of the platted street rights-of-way, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time August 21, 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 street rights-of-way and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portions of the platted street rights-of-way described in the petition should be approved with conditions:
- (1) Obtain the signature of that other abutting property owner on the petition to vacate.
 - (2) As approved by the County Engineer, provide Planning staff with an accurate legal description of the approved vacated rights-of-way on a word document via e-mail.

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

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Obtain the signature of that other abutting property owner on the petition to vacate.
- (2) As approved by the County Engineer, provide Planning staff with an accurate legal description of the approved vacated rights-of-way on a word document via e-mail.
- (3) All improvements shall be according to County Standards and at the applicant's expense.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendation.

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

3-2. VAC2008-25: City request to vacate a portion of complete access control.

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

LEGAL DESCRIPTION: Generally described as a 40-foot full movement opening onto 29th Street North centered 113.55 feet east of the northwest corner of Lot 1, Block 1, Northeast Elementary School Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located on the south side of 29th Street North and west of Woodlawn Boulevard. (City) (WCC #1)

REASON FOR REQUEST: Additional drive associated with Lot Split

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

The applicant is requesting consideration for the vacation of the described platted access control for a 40-foot full movement opening onto 29th Street North. The proposed drive is located 152.64 feet, east of a platted 90-foot full movement drive, within the same subdivision. Typical driveway placement standards have 400 feet of separation between full movement drives on the same side of the street and 200 feet of separation between full movement and right in/right out drives. Other considerations include drives not lining up on opposite sides of the street and not having conflicting left turns. The approximately 282-acre Chisholm Creek public park (restored prairie, wetlands, ponds, woodlands and hiking trails) is located north of the site, across 29th Street North. The park has only two points of access, one being located in line with the before noted platted 90-foot full movement drive. The undeveloped subject site is currently part of the Northeast Elementary School Addition. There is a Lot Split, SUB 2008-57, associated with this request to vacate the described portion of complete access control. There is an unfinished vacation case, VAC 2007-48, associated with the Lot Split. Both VAC 2008-05 and VAC 2007-47 are contingent on the Lot Split, SUB 2008-57, being completed and recorded. There is no public water located in the area of the proposed drive, but there is a sewer line. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the described drive. The Northeast Elementary School Addition was recorded with the Register of Deeds July 9, 2002.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time August 21, 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 street right-of-way and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portions of the platted complete access control described in the petition should be approved with conditions:
 - (1) Vacate the complete access control as approved by the Traffic Engineer. Provide Planning with a legal description of the vacated access control on a Word document, via e-mail.
 - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
 - (3) All improvements shall be according to City Standards and at the applicant's expense, including any new driveways from private property onto public ROW and closing of any existing drives. Provide Public Works with a guarantee to ensure that those

improvements will be made, or the applicant may choose to provide staff with a drive approach certificate which will be recorded with the Sedgwick County Register of Deeds.

- (4) The vacation case will not be in effect until Lot Split SUB 2008-57 has been approved.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the complete access control as approved by the Traffic Engineer. Provide Planning with a legal description of the vacated access control on a Word document, via e-mail.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (3) All improvements shall be according to City Standards and at the applicant's expense, including any new driveways from private property onto public ROW and closing of any existing drives. Provide Public Works with a guarantee to ensure that those improvements will be made, or the applicant may chose to provide staff with a drive approach certificate which will be recorded with the Sedgwick County Register of Deeds.
- (4) The vacation case will not be in effect until Lot Split SUB 2008-57 has been approved.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendation.

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

PUBLIC HEARINGS

VAN FLEET recused himself and left the bench.

4. **Case No.: CUP2008-21** Deferred from July 10, 2008 – Towne West Square, LLC (David Simon) / Roger Wilson (agent) Request DP-71 Amendment to permit Tavern and Drinking Establishment and Night Club in the City on Parcel 1 on property described as:

Lots 1, 3, 7, 8, 9, 10 and 11, Towne West Square Second Addition, Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of I-235 and West Kellogg (Towne West Square, 4600 West Kellogg).

BACKGROUND: The applicant is seeking to add “Tavern and Drinking Establishment” and “Night Club in the City” to the list of permitted uses in Parcel 1 of DP-71, the Towne West Square Community Unit Plan located northeast of the intersection of U.S. Highway 54/400 and I-235. Currently, Parcel 1 is permitted the following uses: regional shopping center, hotel and motel, and is developed with the Towne West Shopping Center. Towne West Shopping Center is one of Wichita’s significant mall-type retail shopping centers. Parcel 1 is permitted 977,000 square feet of gross floor area on 78.38 acres. The proposed night club and drinking establishment is to be located on the south side of the existing mall, in an existing portion of the building containing approximately 25,477 square feet of gross floor area located approximately mid-way between Dillard’s and J.C. Penny. Access to the site will not change, nor are they adding on to the mall. The uses will access to 356 parking spaces directly in front of the proposed location, and another 298 spaces in an outparcel.

The area is dominated by retail uses located in Towne West Square and surrounding outparcels and properties, except for the SF-5 Single-family Residentially (“SF-5”) zoned Christ the King church located to the north of the application area. The nearest residences are located north of the subject property across Maple. The subject property fronts onto the I-235 freeway and is separated from residential uses to the west by both the I-235 freeway and the Big Ditch. To the east there are other retail uses located in LI Limited Industrial (“LI”) district. To the south are other retail uses zoned LC.

CASE HISTORY: A zone change (Z-0970) from “AA” One Family to “B” Multiple Family was recommended for denial by the MAPC and withdrawn by the applicant on May 10, 1973. A zone change (Z-1598) from “AA” One Family to “E” Light Industrial was approved by the City Council on May 14, 1974, subject to platting the property. The applicant subsequently withdrew the request and requested a zone change (Z-1700) from “AA” One Family to “LC” Limited Commercial, which became effective on April 20, 1978, when the property was platted as Towne West Square Addition. The Towne West Square CUP (DP-71) was originally adopted July 15, 1975, and was amended to reduce floor area, change permitted uses, change parcel boundaries, and modify access controls on May 10, 1977. The subject property was replatted as Lot 9, Towne West Square 2nd Addition on April 17, 1979. On September 12, 2002, CUP2002-34, Amendment No. 2 increased the maximum height of building signs on Lot 9, Towne West Square 2nd Addition to 38.5 feet (Dicks Sporting Goods).

ADJACENT ZONING AND LAND USE:

NORTH: LC Limited Commercial, SF-5 Single-family Residential; retail, church
SOUTH: LC Limited Commercial, retail
EAST: LI Limited Industrial, retail
WEST: Unzoned; I-234 Highway

PUBLIC SERVICES: All municipal services are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Regional Commercial” development. The Commercial Location Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.”

The Unified Zoning Code requires a Conditional Use for a nightclub when it is located within 200 feet of a church, public park, school or residential zoning.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the condition that the use be developed and operated consistent with the approved site plan and all other applicable codes and regulations.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site of the proposed tavern and night club is 25,477 square feet out of a commercial retail site permitted to have 977,000 square feet of regional shopping center and hotel/motel uses on LC zoned property. The majority of the area beyond the application area is also zoned LC or LI and used for commercial uses. There is a church located adjacent to the application area that is zoned SF-5, and is located some 747 feet from the entrance to the proposed club. Except for the church, the character of the property located south of west Maple Street and east of I-235 is retail commercial.
2. The suitability of the subject property for the uses to which it has been restricted: Uses permitted on the site today are regional shopping center and hotel/motel uses. The regional shopping center use permits a wide range of retail sales uses. The site could continue to be used as restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Given the parcels large size, 78.38 acres, and the fact the use is to be located on the southern side of the shopping mall, which creates the situation where the mall is the buffer between the mall and the church.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would presumably represent an economic gain for the applicant, and diversify the tenant mix of the mall. Denial would presumably require the potential user to find an alternate location.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is consistent with adopted plans and policies to the extent that it is to be located on a large tract that is well buffered from specified sensitive uses.
6. Impact of the proposed development on community facilities: Existing community facilities such as code enforcement, police, fire and emergency services are in place.

JESS MCNEELY, Planning Staff presented the Staff Report. He said DAB IV recommended denial of the request at the July 2, 2008.

FOSTER commented that the original submittal didn't give a number of taverns requested. He asked if the request was for "A" tavern at the location, or could the MAPC be facing a request like this again.

MCNEELY said the application was for a tavern and drinking establishment and nightclub within the City and that type of land use was permitted within that parcel, period. However, he said the conditions will be limited to the site plan submitted with the application. He said at this time one location for a tavern was being requested.

FOSTER commented then an applicant would have to go through a similar process if this type of request comes up again. He said he was interested in reviewing the Community Policing Through Environmental Design (CPTED) Study completed by the Wichita Police Department (WPD) on the exterior of the structure and the recommendations contained in that report.

MCNEELY commented that WPD staff would have to respond to his questions regarding the CPTED report.

MILLER STEVENS asked for clarification as to how the distance from the establishment is measured from residences, schools, and churches. She asked if it was from the front door of the building or did it include parking areas as well? She commented that the parking area almost abuts the church.

JOHNSON in @1:47 P.M.

MCNEELY said the a conditional use in Limited Commercial (LC) zoning requires a 200 foot distance from residences, churches, parks, and schools and would include the parking area; however, because this was a request to amend a Community Unit Plan (CUP), the entire CUP was zoned as one lot. He said they were not discussing separation of this parcel from other land use within the CUP. He said the actual location of the club was over 700 feet from the school and church and over1, 500 feet from residences. He said club parking, which was limited to the south side of the mall, was located even further away. He said one of the conditions of the permit was that parking be limited to a certain geographic area.

ROGER WILSON, ATTORNEY FOR APPLICANT, introduced **MARK THREADGILL, IN-HOUSE COUNSEL FOR GRAHAM BROTHERS ENTERTAINMENT**, who he said was present to give a presentation on the proposal. He also introduced **ROGER GERHART, PRESIDENT, GRAHAM BROTHERS ENTERTAINMENT** and **STEVEN EWING, VICE PRESIDENT STAUBACH RETAIL**, and **SHANE MCWHORTER, AREA OPERATIONS DIRECTOR FOR TOWNE EAST AND TOWNE WEST MALLS**.

MARK THREADGILL, IN-HOUSE COUNSEL, GRAHAM BROTHERS ENTERTAINMENT began his presentation by explaining that this was a “stand alone “club not accessible through the mall. He mentioned that the facility would provide an economic gain and not be a detriment to the mall. He also mentioned tax ramifications and the benefit to the City to install a 25,000 square feet facility where they are currently not collecting any money. He said this development was in compliance with the City’s Comprehensive Plan for locating community facilities in areas so that residences will be unaffected by the club’s location. He said they have worked with the WPD and the recommendations contained in the CPTED report and feel they have designed a better facility. He mentioned that all parking will be located on the south side of the facility, away from residential areas on the north side, which should create zero impact to the neighborhood to the north. He said the facility will actually be located 1,500 feet from the neighborhood and 750 plus feet from the church and school. He said because the area abuts I-235 and other major thoroughfares, there is actually more lighting in and around the parking lot; in addition to the advantage of patrons exiting the club onto major thoroughfares and not through the neighborhood on north. He said patrons are not going to park on the north side of the parking lot and walk to the club on the south side; they are going to want to park near the club. He said another benefit is the revenue they will be providing the mall as a tenant. He concluded by stressing that there will be no entrance into the mall from the club so there was no potential for underage patrons from the mall to get into the club without being addressed at the front door. He added that the mall usually closes between 8:30- 9:00 P.M. and that mall hours and club hours shouldn’t overlap. He mentioned installation of surveillance cameras (as recommended by the CPTED report) in addition to other security measures they provide such as golf cart patrols, and other constant monitoring of the parking lot, which prevents a lot of issues that would happen with clubs that don’t exercise those precautions. He mentioned other policies and procedures they have in place including screening of potential employees.

MOTION: To give the agent two additional minutes.

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

THREADGILL mentioned staff training and testing that is required for every individual who works in the facility in addition to annual certification renewal. He mentioned other security measures such as the parking lot “5 minute rule” requiring individuals to leave the parking lot which prevents loitering; the “Goodbye line” that occurs when patrons leave the club where employees line up at the front door screen

patrons to make sure they are not intoxicated. He said in some cases they have taken keys from individuals and secured the patron a safe ride home. He said they actually pay for the taxi. He also mentioned the “free food” give away where even though they serve food in a limited capacity; they also give food away to help offset the affects of alcohol consumption. He concluded by stating that that they are more than a club and that they support the community, host charitable events, adhere to the law, are concerned about citizen safety in the area and that they will be a good neighbor.

Responding to several questions from **HENTZEN, THREADGILL** explained that the majority of their clubs are located in shopping centers, but that they have no clubs in Kansas.

MARNELL asked about the club’s capacity.

ROGER GERHART, PRESIDENT, GRAHAM BROTHERS ENTERTAINMENT said the facility is 25,000 square feet in size and the capacity set by the City of Wichita was between 900 – 1,000 people.

MILLER STEVENS asked several question concerning the previous location operated by Graham Brothers in Wichita on East Kellogg. She asked how many of the procedures discussed today were in place at that facility and what have they updated and changed that would deal with the issues that precipitated the closing of that location? She asked what has changed. She also asked about the entertainment format

GERHART stated that the procedures are pretty much the same. He said this club will be strictly a Country/Western club. He said the club on East Kellogg featured all kinds of music including top 40’s, a karaoke bar, and contemporary music.

HENTZEN asked how long the club on East Kellogg has been closed and where they will obtain staff for this operation. Will it be the same staff they had out east?

GERHART commented that the East Kellogg club has been closed a couple of years, and that they will hire all new staff by advertising. He said they will definitely have new management.

Responding to a question from **FOSTER** concerning exterior surveillance cameras recommended by the CPTED study, **GERHART** said they will follow all guidelines recommended by the WPD, which in turn will help the longevity of their establishment.

MILLER STEVENS asked **GERHART** to explain what policies and procedures they have established that makes them feel they will have a different outcome with this club than the club on East Kellogg which had such a negative impact on the community because of the activities and situations going on around the club, even though it wasn’t located near churches, schools, and shopping, like this location.

GERHART explained that the contemporary hits room drew a different type of crowd than will be drawn by a Country/Western venue. He said they want Police involvement in their operation, which very few operators in their business do. He briefly mentioned how the top 40’s crowd followed the manager of the East Kellogg club home and threatened him. He said after that, they had no choice but to close the club. He said the Country/Western venue will draw an older crowd who generally respect the law and follow the rules and regulations. He said they do not believe they will have problems they can’t control.

KEVIN SCHOCK, 3005 WEST FIRST STREET, PRESIDENT SUNFLOWER NEIGHBORHOOD ASSOCIATION said at their meeting Thursday evening, 90% of the 30 people in attendance that live in the area opposed this request. He mentioned concerns about kids who work at the mall running into this crowd after work because although the mall may be closed, some of them still don’t get out of work until between 10:00-10:30 P.M. He said the Graham Central Station club on East Kellogg created a lot of attention from the WPD; that they had to run crowds off and get crowds under control and that the WPD doesn’t need that; they are busy enough as it is. He said in reference to

increased WPD patrols at Towne West; who will patrol their neighborhoods. He commented that they have worked hard as a community to make their area safe. He also mentioned that drunk drivers will be coming down Maple and Douglas Streets, that there was no way to avoid that. He concluded by stating that they felt Towne West Mall should not have a bar located there. He also mentioned Christmas time and problems a bar may create for shoppers.

JOSHUA BLICK, 2039 S. EVERETT, PRESIDENT, SOUTHWEST NEIGHBORHOOD ASSOCIATION, AND MEMBER OF DAB IV commented that they had a separate meeting with Graham Brothers Entertainment management staff and DAB IV recommended denial of the application. He said they are extremely skeptical of what is going on and they feel there are a number of unanswered questions concerning the proposal. He asked if the club was for 18 years and older or 21 years and older? He mentioned the homicide at Chubbs and how the association was very distraught over that because they had fought for three months to get that club closed. He said the only way his trend can be stopped was to stop the zoning case. He commented that the issue was in the MAPC Commissioner's hands. He referenced the Staff Report and commented that the club located on East Kellogg was further away from residential than this proposed location. He said patrons will still exit onto West Street or Maple Street. He also mentioned that with a large parking lot people fly through at a high rate of speed possibly crashing into other patrons exiting the mall from the movie theatres, which often do not let out until close to midnight. He also mentioned the WPD CPTED report. He referred to **MR. GERHART's** comments concerning patrons of Country/Western clubs and how they have not had a homicide in the last five years; however, he mentioned that just last year there was a homicide at a Country Western club. He also mentioned another homicide where an individual was run down in the parking lot.

MARNELL asked if it was the location they were opposed because of the access to Maple Street. He also asked if this was located within the Southwest Association's neighborhood area. He also asked if they would be opposed to this proposal anywhere in Sedgwick County.

BLICK said this was located outside the Southwest Neighborhood Association neighborhood. He added that there may be a place suited for this activity, but not at this location.

PHYLLIS MACKAY, 430 S. GORDON STREET said she lives within a mile of Town West Mall. She referred to remarks from the President of the Sunflower Neighborhood Association and said she would like to voice some of the same concerns. She also mentioned the correspondence she handed out from her husband. She said she was really impressed on how Graham Brothers Entertainment trains their employees. She asked if they can train their clientele as well.

LOIS PASCAL, 401 S. SCHOOLER said she lives about 1 ½ miles west of Towne West Mall. She said she is concerned and doesn't want a tavern that close to a school because people use the athletic fields and gym at night often past 9:00 -10:00 P.M. She also mentioned questionable people coming into the area causing vandalism to the school and church.

JAMIE GRABLE, PLUM THICKET said she has been involved with Graham Brothers Entertainment and enjoyed her time with them. She said this proposal was beneficial to the City because it will generate money and the Graham Brothers Entertainment will have money to care for the establishment and take care of venues and staff. She said she believes people in Wichita are city oriented and want to grow and bring in new attractions.

TAPE 1, SIDE 2

GERHART commented that they will put in a good club; that they have been working with WPD well; and that they understand everyone's concerns. He said he promised to work hard and keep the place as safe as they possibly can; that they will work hard at it every day.

HILLMAN asked if they have a similar problem like they did on the east side a few years ago where they cannot control the crowd, will they close this establishment. He also asked if the club was for people 21years old and older.

GERHART said they don't think we will run into the same problem because Country/Westernfans are an older, more reasonable crowd that won't give them the same type of problems they had out East. He added that the club will be for 21year olds and older.

HENTZEN asked if some of the officers present with the WPD Officer would share their experiences and report on this particular application.

MCKAY commented that the officer about to speak was his nephew.

CLARK BOLAN, WPD, PATROL WEST, COMMUNITY POLICING said he was concerned that when people leave the parking lot at the club, they may congregate on the north side in the Christ the King school and church parking lot.

GERHART said they will be responsible for the whole Towne West Mall parking lot at night, including cleaning it up and not allowing loitering and making sure everyone is cleared off the lot by 2:15 A.M. He said they will not allow loitering across the street either.

SHANE MCWHORTER, REPRESENTING MANAGEMENT OF TOWNE EAST AND TOWNE WEST, said Simon Properties is willing to meet any security needs to supplement what Graham Brothers Entertainment is intending to do.

GERHART stated that the club will be open from 8:00 P.M until 2:00 A.M., five days a week.

BOBBY WINDER, WPD, PATROL WEST, COMMUNITY POLICING, said he used to work Beat14, and he said Club Rodeo, which is located in the same place where the previous Graham Brothers Entertainment club used to be was exclusively Country/Western and that they have had a homicide there as well as several other incidents that required WPD attention. He said patrons at Country/Western clubs do cause problems. He said one of the detectives present at the meeting had a complete list of the various occurrences.

MARNELL asked if an operation had security in place, would he want a Country/Western club any place in this town.

WINDER said he was not against this specific venue, but the larger the size and the more people, the more likelihood of problems. He said it was a question of numbers. He said he was stating that they have had a homicide at a Country/Western club the same size. He said that is proof that it has already happened.

MARNELL asked if the WPD also had homicides that did not occur in clubs.

WINDER said yes, WPD responds to homicides at residences and other areas.

MARNELL said then his concern was the size of the club and the capacity.

WINDER said he wanted to point out that **GERHART** can't say he can prevent a homicide from happening at a Country/Western venue.

MARNELL said homicides are true of virtually any group you can name in society. He added that he thought the plan presented seems to be well thought out; that this is a lawful activity; and that it is a proper location for the activity by zoning codes.

MOTION: To approve subject to staff recommendation.

MARNELL moved, **MITCHELL** seconded the motion.

DENNIS said he would end up voting for the motion even though he didn't know if it was a good idea to put something like this in a mall. He said, however, that he can't make a decision based on whether or not he thought it was a good idea, but rather he had to make the decision based on zoning rules, even though overall he didn't think a mall was the correct place for this activity.

JOHNSON said he would support the motion because he felt the applicant has proven to the City that if they feel they cannot control the situation, they will shut the club down because they have done it before and that means a lot to him. He added in that sense this is not strictly a business, even though it is a business. He added that he liked what they said about security and patrolling the area.

FOSTER said he would vote in opposition to the proposal to support the DAB recommendation.

THE MOTION WAS APPROVED (7-4-1); FOSTER, HENTZEN, HILLMAN and MILLER STEVENS – No. VAN FLEET – Abstained.

VAN FLEET back on the bench.

5. **Case No.: ZON2008-42 and CON2008-36** – Dennis Niedens (applicant) Request City zone change request from SF-5 Single-family Residential to TF-3 Two-family Residential and City Conditional Use for multiple duplexes in TF-3 Two-family Residential zoning on property described as:

Lots 63 and 64, on St. Paul Street, Sim Park Gardens, Sedgwick County, Kansas. Generally located South of 9th Street North and east of St. Paul (918 N. St. Paul).

BACKGROUND: The applicant requests TF-3 Two-family Residential (“TF-3”) zoning on a .6-acre site, currently zoned SF-5 Single-family Residential (“SF-5”). The site was developed with a single-family dwelling which was recently demolished. The applicant also requests a Conditional Use for multiple duplexes on one; the applicant intends to develop four duplexes with eight total units (see the attached site plan). The property is 25,480 square feet, with 260 linear feet of frontage along 9th Street. North and south of the application area are SF-5 zoned single-family residences. East of the site are GO General Office (“GO”) zoned duplexes and a convalescent care tower. West of the site is an SF-5 zoned church.

CASE HISTORY: The application area was platted as lot 63 and 64 of the Sim Park Gardens Addition in 1924.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residential
SOUTH:	SF-5	Single-family residential
EAST:	GO	Duplexes
WEST:	SF-5	Church

PUBLIC SERVICES: Both 9th Street North and St. Paul are classified as minor collector streets, and both have a 60-foot right of way at the application area. 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.

The Unified Zoning Code (UZC) permits multiple duplexes on one lot in TF-3 zoning with the approval of a Conditional Use. The UZC limits multiple dwellings on one lot in the TF-3 zone to 14.5 dwelling units per acre; this application is below that limit.

RECOMMENDATION: The immediate neighborhood is a mixture of single and multi-family development, and therefore not out of character with the proposed duplexes. Likewise, the proposed zone change is in complete conformance with the Land Use Guide of the Comprehensive Plan. Under the current SF-5 zoning the application area could be developed with up to five dwelling units, this zone change and conditional use request propose creating four duplexes with eight dwelling units.

MAPD has not been contacted by any members of the public regarding this case.

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 (ZON2008-42) to TF-3 Two-family Residential.
- B. APPROVE the Conditional Use Request (CON2008-36), subject to the following conditions:
 1. The site shall be limited to four duplexes and eight total dwelling units.
 2. The site shall be developed in general conformance with the approved site plan.
 3. Development on the site shall conform to all applicable codes to include zoning, building, landscape, housing, and health codes.
 4. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North and south of the application area are SF-5 zoned single-family residences. East of the site are GO zoned duplexes and a convalescent care tower. West of the site is an SF-5 zoned church. The proposed rezoning and development of duplexes is not out of character with nearby single and multi-family zoning and uses.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family residential units as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and two-family development should have no negative effects on surrounding single-family residences. The proposed duplexes will serve as a transitional buffer from the more intense multi-family development and convalescent care tower east of the site to the remaining neighborhood further to the west.
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. The proposed development

conforms with the requirements of the Unified Zoning Code.

5. Impact of the proposed development on community facilities: The proposed duplex development should have no 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 and reported that the DAB approved this request with a reduced number of units to six total dwelling units (from eight dwelling units requested on the application).

FOSTER asked about the buffering in the rear of the lot, and how there may only be 10 feet left in one spot relative to the site plan.

MCNEELY explained that the setback requirement in TF-3 zoning was twenty feet and that the proposal meets that setback requirement, as well as other conditions listed in the Staff Report. He said the applicant must meet all the Unified Zoning Code requirements in order to develop the property, including landscaping.

DENNIS NEIDENS, APPLICANT, said he purchased the property a few months ago and demolished an old house that was in a bad state of repair. He said he attended the DAB VI meeting and agreed to reduce the site to three duplexes, instead of the originally requested four, in addition to the required landscaping and whatever else is required by code to screen the property to the south. He said they want to be a good neighbor; that Via Christi has some nice duplexes in the area and they want to continue that.

MARNELL clarified that the applicant was willing to build only three duplexes, when it was lawful and within regulations to build four units at this location simply because the DAB was trying to impose that requirement on him.

NEIDENS said he was trying to be a good neighbor and get along in the neighborhood even though he would prefer to build four units; he was willing to build three units.

MARNELL said he didn't know DAB was allowed to impose standards that are higher than the Unified Zoning Code.

NEIDENS said he didn't necessarily agree with the DAB request, but added that he would like to be a good neighbor and do a small, well managed duplex.

MARNELL asked the applicant if the MAPC granted the original application request, would he build three or four duplexes.

NEIDENS said obviously he would prefer to build four units.

FOSTER said he applauded **MR. NEIDEN'S** efforts because he felt in-fill projects were fantastic. He asked about the exterior improvements on the units such as patios and fences.

NEIDENS said although it was not a code requirement, they will screen and fence the units so they can have private yards for pets and small children

MOTION: To approve the original application for four duplexes subject to staff recommendation.

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

MILLER STEVENS said she wanted to make a comment regarding the statement made regarding DAB Boards and the fact that we always follow code on this Commission. She said she took offense to those comments because the MAPC does not always follow code; that she has voted many times trying to protect neighborhoods when the MAPC overlooks the code because they don't like the code at the time. She said she doesn't think it has anything to do with the DAB boards which are established to be a voice of the people and she didn't think the MAPC should ignore them.

MARNELL stated that DAB Board's are advisory to the City Council not the Planning Commission. He said what she said mischaracterized what he said. He said DAB's were attempting to impose conditions that were in excess of the code.

6. **Case No.: ZON2008-44** – Wayne & Vev Kessler (owner/applicant) Request City zone change from TF-3 Two-family Residential to NR Neighborhood Retail on property described as:

Lots 45, 46 and 47, Block 1, Academy Park Addition to the City of Wichita, Sedgwick County, Kansas. Generally located north of Douglas Avenue and 150 feet west of Meridian Avenue.

BACKGROUND: The applicant requests a zone change from TF-3 Two-family Residential ("TF-3") to NR Neighborhood Retail ("NR") on a 0.25-acre piece of property generally located north of Douglas and west of Meridian Avenue. The property requesting the rezone is currently developed as a retail use in a structure that was built in 1945.

The surrounding property to the north and west is zoned TF-3 and mostly occupied by single-family homes, with some vacant lots scattered through the neighborhood. The property to the south of Douglas is zoned LC Limited Commercial ("LC") and currently has a vacant Dillon's store on the site. Property directly to the east of the subject site is zoned LC and is developed with retail uses. Other uses along Douglas to the east include retail and office uses and residential uses to the west.

CASE HISTORY: The property is platted as Lots 45, 46 and 47, Block 1, Academy Park Addition, recorded February 9, 1909.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3	Residence
SOUTH:	LC	Vacant Commercial Property
EAST:	LC	Retail
WEST:	TF-3	Residence

PUBLIC SERVICES: Douglas is a two-lane minor arterial with recorded 2007 annual average daily traffic was 7,500 vehicles per day on Douglas west of Meridian. All normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the requested rezoning tract as appropriate for "local commercial." The requested rezoning to NR is in conformance with the local commercial designation for the property along Douglas. This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the **Commercial/Office Objective** to "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize

detrimental impacts to other adjacent land uses.” **Strategy III.B.6** recommends that traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.

Commercial Locational Guidelines #3 recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use; **#5** commercially-generated traffic should not feed directly onto local residential streets; and **#6** commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas, including established areas of similar development.

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

This recommendation is based on the following findings.

1. The zoning, uses and character of the neighborhood: The surrounding property to the north and west is zoned TF-3 and mostly occupied by single-family homes, with some vacant lots scattered through the neighborhood. The property to the south of Douglas is zoned LC Limited Commercial (“LC”) and currently has a vacant Dillons store on the site. Property directly to the east of the subject site is zoned LC and is developed with retail uses. Other uses along Douglas to the east include retail and office uses and residential uses to the west.
2. The suitability of the subject property for the uses to which it has been restricted: The property to the east and south is zoned LC. The rezoning tract has been occupied by the same retail use for some time, and at this time, it is unlikely that any single-family or duplex development would occur on the site if it were retained in TF-3 zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of NR zoning on this property, and the existing use should not have a detrimental effect on the surrounding property. The existing use has been in operation for many years and fits well as a buffer between a residential area and the intersection of Douglas and Meridian.
4. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If the property remains zoned TF-3, the applicant would remain a non-conforming use which could create a financial hardship on the applicant if any damage were to occur to the structure or property. There should no change to public health, safety of welfare since the use will not change from what is currently being operated on the property.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “Wichita Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the requested rezoning tract as appropriate for “local commercial.” The requested rezoning to NR is in conformance with the local commercial designation for the property along Douglas. This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the Commercial/Office Objective to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” Strategy

III.B.6 recommends that traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.

- 6. Impact of the proposed development on community facilities: The should not be a significant impact on public service or traffic since the use is existing and no changes are planned for the site.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

- 7. **Case No.: ZON2008-45** – Sedgwick County (owner); Baughman Company, P.A., Attn: Russ Ewy Request County zone change from SF-20 Single-family Residential and GC General Commercial to LC Limited Commercial on property described as:

That part of Lot 1, Block A, Sedgwick County Zoo 2nd Addition, Sedgwick County, Kansas lying in the Northwest Quarter of Section 11, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located west of the intersection of Zoo Boulevard and Windmill Road.

BACKGROUND: Sedgwick County is requesting a zone change to LC Limited Commercial with a protective overlay on property zoned SF-20 Single-Family Residential (“SF-20”) and GC General Commercial (“GC”) to permit additional development and signage on the eastern portion of the Sedgwick County Zoo. The property is located west of the intersection of Zoo Boulevard and Windmill Drive.

The protective overlay would eliminate all uses except Parks and Recreation, Community Assembly and those uses permitted in the SF-20 zoning district. Additionally, the protective overlay would satisfy the requirement that all LC zoned properties larger than six acres held in unified ownership be subject to a community unit plan (“CUP”) overlay or a protective overlay in lieu of a CUP.

The property is relatively isolated from other uses. The Wichita-Sedgwick County Flood Control Project (the “Big Ditch”) is located to the southeast of Windmill Road. A railroad line runs parallel with Zoo Boulevard. North of the railroad line is a mini-storage warehouse on property zoned OW Office Warehouse (“OW”) and an auto body repair shop on property zoned GC. The area to the east is zoned SF-5 Single-Family Residential (“SF-5”) and is open space. Remaining portions of the zoo are located to the south and west on property zoned LI Limited Industrial (“LI”) and SF-20. Sedgwick County Park borders the zoo on the west and is zoned SF-20.

CASE HISTORY: The property is platted as Sedgwick County Zoo 2nd Addition, recorded October 12, 1971.

ADJACENT ZONING AND LAND USE:

NORTH:	OW, GC, LC,	Mini-storage warehouse, commercial
SOUTH:	LI	Zoo, Big Ditch
EAST:	SF-5	Open space
WEST:	SF-20	Zoo

PUBLIC SERVICES: Zoo Boulevard is a four-lane divided arterial and Windmill Road is a four-lane arterial. Traffic counts in 2006 were 29,500 ADTs (average daily traffic) on Zoo Boulevard and 13,500

ADTs on Windmill Road. The zoo has one major entrance off each road. Other public services are available.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for ”major institutional” use. This conforms to the use of the property as the Sedgwick County Zoo.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the voluntary protective overlay restricting uses to Parks and Recreation, Community Assembly and those uses permitted by-right in the SF-20 Single-Family Residential district.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The property is relatively isolated from other uses. The Wichita-Sedgwick County Flood Control Project (the “Big Ditch”) is located to the southeast of Windmill Road. A railroad line runs parallel with Zoo Boulevard. North of the railroad line is a mini-storage warehouse on property zoned OW Office Warehouse (“OW”) and an auto body repair shop on property zoned GC. The area to the east is zoned SF-5 Single-Family Residential (“SF-5”) and is open space. Remaining portions of the zoo are located to the south and west on property zoned LI Limited Industrial (“LI”) and SF-20. Sedgwick County Park borders the zoo on the west and is zoned SF-20.
2. **The suitability of the subject property for the uses to which it has been restricted:** The portion of the tract zoned GC would allow additional development and signage as desired by the County, but the portion zoned SF-20 hampers additional development, especially signage. Consolidation of the tract to LC zoning allows the additional development and signage, but with more restrictions than with a GC zoning classification.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The use would continue as the Sedgwick County Zoo, but would afford additional signage and future expansion of the zoo. The site is relatively isolated and buffered by major streets, the Big Ditch and Sedgwick County Park, so should have minimal impact on surrounding properties.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for ”institutional” use. This conforms to the use of the property as the Sedgwick County Zoo.
5. **Impact of the proposed development on community facilities:** No additional impacts.

DONNA GOLTRY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

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

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8. **Case No.: CUP2008-30** - Ronald D. Ryan Living Trust (owner), David Ray (agent) Request DP 134 Amendment #2 to divide Parcel 2 into two parcels and add residential use on property zoned GO General Office:

That part of Lot 2, Timber Grove Lakes, an Addition to Wichita, Kansas, Sedgwick County, Kansas, described as commencing at the northern-most corner common to Lots 2 and 3 in said Addition; thence S 00 degrees W along the common line of said Lots 2 and 3, 305 feet; thence S 58 degrees 21'33" W, along the common line of said Lots 2 and 3, 164.44 feet; thence S 00 degrees W along the common line of said Lots 2 and 3, 135.95 feet for a place of beginning; thence S 90 degrees E, 299.99 feet to the East line of said Lot 2; thence S 00 degrees E along the East line of said lot 2, 372.97 feet to a corner of said Lot 2; thence N 90 degrees W, 10 feet to a corner common to Lots 2 and 1 in said Addition; thence S 58 degrees 21'33" W along the common line of said Lots 1 and 2, 770.66 feet to the Southwest corner of said Lot 2; thence N 00 degrees 04'58" W along the common line of said Lots 2 and 3, 410.75 feet to a corner common to said Lots 2 and 3; thence N 58 degrees 21'33"E along the common line of said Lots 2 and 3, 430.72 feet to a corner common to said Lots 2 and 3; thence N 00 degrees E, 140.55 feet to the point of beginning. Generally located west side of Maize Road approximately 1/4 mile north of Central Avenue.

BACKGROUND: The applicant proposes Amendment #2 to DP-134 Timber Grove Lakes Community Unit Plan Amendment #2 to separate an approximately 6.65-acre tract from the original Parcel 2 (9.2 acres) and develop the parcel with residential use. The property is zoned GO General Office ("GO"), and located west of Maize Road approximately 1/4 mile north of Central Avenue. The remaining land in Parcel 2 (2.55 acres) is owned by two separate owners, with one tract being developed with a multi-suite office building and the other tract held in open space and serving as common access to the adjoining Parcel 3.

The applicant proposes to develop Parcel 2A with approximately 15 dwelling units (triplexes or townhouses). The units would be one or two story units, similar in height to those in the adjoining development. A preliminary site plan and elevation is attached, showing one-story units with walk-out basements and a private drive along the north/ northwest property line.

The net density of Parcel 2A (excluding the floodway reserve) would be 4.6 dwelling units per acre. This is below the maximum density allowed in SF-5 Single-Family Residential ("SF-5"), below the density allowed on the adjoining Parcel 3, and below the maximum density of seven dwelling units per acre stipulated in General Provision 3 of DP-134. Allowable uses for Parcel 2 are those permitted in the "BB" district, now converted to the GO district, but excluding boarding houses, lodging houses, residential storage warehouses, boathouses, cemeteries and any residential use. This amendment would remove the prohibition on residential use to allow it up to a net density (excluding area within floodway reserve) of 5.3 dwelling units per acre.

A fieldstone wall forms the common boundary with Parcel 3 on the northwest, and a 35-foot unplatted setback is located on the Parcel 2 side of this common boundary. Parcel 3 is developed with approximately 40 dwelling units, consisting of single-family units and duplexes on 23 net acres (34 total acres with 11 in floodway) for a density of approximately two dwelling units per acre, plus a large open space and a common area with recreational facilities.

A substantial portion of proposed Parcel 2A is unsuited for development due to the presence of the floodway reserve (ponds), bordered by a 35-foot unplatted setback and a 45-foot utility easement. The easement is not tangent to the floodway reserve, so that the combined width of the easement/setback is approximately 53 feet from the western edge of the floodway reserve. Additionally, portions of Parcel 2A are within the FEMA Special Flood Hazard Areas subject to inundation by the 1% annual chance flood (commonly known as the 100-year floodplain), and 0.2% annual chance flood (500-year floodplain). All of these factors reduce the buildable area in Parcel 2A, which reflects the relatively small number of units (15) proposed.

Development in the vicinity includes a three-story office building on the developed portion of Parcel 2, zoned GO, and Timber Grove Lakes residential development on Parcel 3, zoned SF-5 Single-Family

Residential (“SF-5”). Parcel 1 of DP-134 is located to the south and is developed with retail/commercial uses on property zoned LC Limited Commercial (“LC”) including a grocery store as the closest commercial use. Parkland along the Cowskin Creek is located to the southwest and more parkland is located to the north of DP-134. The property east of Maize Road is zoned SF-5 and developed with a church and single-family residences.

CASE HISTORY: The property is platted as Lot 2, Timber Grove Lakes Addition, recorded September 5, 1984. DP-134 originally was approved January 10, 1984. Amendment #1, approved August 29, 1995, divided Parcel 1 into a number of parcels and increased the range and intensity of commercial uses on the tract. In 2002, an administrative adjustment to allow similar residential use on this portion of Parcel 2 was begun but not finalized due to delays in development.

ADJACENT ZONING AND LAND USE:

NORTH:	GO, SF-5	Office, parkland
SOUTH:	LC	Grocery store, retail
EAST:	SF-5	Church, single-family residences
WEST:	SF-5	Single-family residences, duplexes, Cowskin Creek

PUBLIC SERVICES: Maize Road is a four-lane major arterial abutting the application area. Average daily traffic (ADTs) was 19,000 to 19,600 vehicles per day in 2006. All normal public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “local commercial.” Local commercial allows a range of uses compatible with low intensity commercial use, but residential use is not the intended primary use of the “local commercial” designation. The proposed development would be in conformance to the lower-intensity designation of “urban residential” found on the adjoining residential properties to the west/northwest and across Maize to the east. The proposed use of the property is within the low-density residential range and would be appropriately buffered from the higher intensity LC zoning to the south by the ponds in the floodway reserve.

RECOMMENDATION: 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 Amendment #2 to DP-134, subject to the following conditions:

1. Parcel provisions shall be revised to separate Parcel 2A from Parcel 2. Uses for Parcel 2A shall be limited to 15 dwelling units consisting of duplexes, triplexes or townhouses with a maximum of six units in a common structure, with a maximum height of two story or 35 feet. The dwelling units shall have architectural compatibility with the materials and character of the residential development on Parcel 3; with the fieldstone material on the screening wall between Parcel 2 and 3 and on the office building on Parcel 3 used as the unifying element.
2. General Provision 1 shall be revised to recalculate the distribution of land area within office and residential use.
3. General Provision 2 shall be revised to add the residential component of Parcel 2A.
4. General Provision 4 shall be revised to add that signage for Parcel 2A shall be limited to those signs permitted in the SF-5 Single-Family Residential zoning district.
5. General Provision 5 shall be retained as stated, with the intent to require a landscaped buffer along the common property line with Parcel 3.
6. No additional access points shall be added. Access shall be provided by cross-lot circulation and ingress-egress over Parcel 2.

7. Dedicate by separate instrument easements for existing storm sewers connecting with the cul-de-sacs in Parcel 3 to the floodway reserve. Ensure no building construction occurs over the storm sewer or storm sewer easements.
8. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
9. 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.
10. 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: Development in the vicinity includes a three-story office building on the developed portion of Parcel 2, zoned GO, and Timber Grove Lakes residential development on Parcel 3, zoned SF-5 Parcel 1 of DP-134 is located to the south and is developed with retail and commercial uses on property zoned LC including a grocery store as the closest commercial use. Parkland along the Cowskin Creek is located to the southwest and more parkland is located to the north of DP-134. The property east of Maize Road is zoned SF-5 and developed with a church and single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The area also would be suitable for office use as currently zoned and allowed by the community unit plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The CUP provisions should ensure that the new development will be compatible with the existing development, thus reducing detrimental effects on nearby existing residential development.
4. Length of time the subject property has remained vacant as zoned: The tract has been vacant since 1984.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "local commercial." Local commercial allows a range of uses compatible with low intensity commercial use, but residential use is not the intended primary use of the "local commercial" designation. The proposed development would be in conformance to the lower-intensity designation of "urban residential" found on the adjoining residential properties to the west/northwest and across Maize to the east. The proposed use of the property is within the low-density residential range and would be appropriately buffered from the higher intensity LC zoning to the south by the ponds in the floodway reserve.
6. Impact of the proposed development on community facilities: The requested amendment probably will result in less traffic on Maize Road than developing the tract for office use. The development will need to avoid placing structures in easements and areas subject to flood hazards.

DONNA GOLTRY, Planning Staff presented the Staff Report. She said this was basically to divide parcel 2 from parcel 2A and add residential use as a permitted use on Parcel 2A. She said DAB V heard the case Monday night and requested additional landscaping, which the applicant and architect were working on.

DAVID RAY, 329 NORTH LANCASTER, AGENT FOR THE APPLICANT said they met with the Timber Grove Home Owners Association and said they are willing to work with them and their architectural committee to blend the proposed neighborhoods. He said they are proposing five buildings with three garden homes in each building. He said the price range will be around \$290,000 per unit.

MITCHELL clarified that the agent and applicant agreed to all 10 items recommended by staff in the Staff Report.

RAY said yes.

HILLMAN asked if they would provide additional fill to protect the area from potential flooding. He asked if the units had basements.

RAY said the units have view out basements. He added that there was quite a bit of fill on the west side.

MOTION: To approve subject to staff recommendation, and the additional amendments the applicant has offered.

JOHNSON moved, **ANDERSON** seconded the motion, and it carried (11-0-1).
MCKAY- Abstained.

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9. **Case No.: CON2008-38** – Andrew & Kathleen Lauer (owner(s) Bergkamp Construction, Attn: Chris Snook (applicant), Baughman Company, Attn: Russ Ewy (agent) Request County Conditional Use for mining/quarrying (soil extraction) on property zoned SF-20 Single-family Residential:

The North Half of the Southeast Quarter of Section 9, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; and the Southwest Quarter of the Southeast Quarter of Section 9, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT a tract described as beginning at the Northwest corner of the Southwest Quarter of said Southeast Quarter of Section 9, Township 28 South, Range 1 West; thence South 160 feet; thence East 108 feet; thence Northwest to a point 65 feet due East of beginning; thence West 65 feet to beginning. Generally located west of Ridge Road approximately 1/4 mile north of MacArthur Road.

BACKGROUND: The applicant requests a Conditional Use to allow “Mining and Quarrying” for the excavation of fill material to be used on proposed construction projects within the city. The undeveloped property, located northwest of the MacArthur and Ridge Road intersection, is currently zoned RR Rural Residential (“RR”); the site is 59.7 acres in size, while approximately half of the 59.7 acres is to be excavated. The applicant intends to excavate to a maximum depth of approximately 20 feet, excavating from the south to the north, with a ½ percent slope from north to south, see the attached site plan. The excavation area will gather water when the creek floods, but the ½ percent slope will prevent the excavated area from retaining water, thus keeping the site a dry basin. The applicant has been working with the Army Corps of Engineers, Department of Water Resources and the Department of Parks and Wildlife to ensure they abide by any regulations and to provide any studies that those entities may require to permit the excavation. According to GIS, the average depth of the groundwater in this section is around 26 to 27 feet from the surface, although that depth varies depending on location. Proposed access to the site is off of Ridge Road, approximately a half mile north of MacArthur Road. The proposed access is via a field entrance located at the northeast end of the tract. The Cowskin Creek runs through the southern part of the site, and the property lies within the 100-year flood plain. The site is not currently fenced, but fencing of the excavation area will be a condition of approval.

Of some concern in this request is the potential for pollutants, sediment and erosion from the excavation site to enter the Cowskin Creek through possible storm water runoff. The area will be re-vegetated with native grass throughout the excavation process which will help remove any possible pollutants from storm water runoff before entering the Creek. Also, the applicant has been working with the responsible entities to mitigate any negative impacts and to acquire the proper permits for the excavation operation.

North of the application area is property zoned LI Limited Industrial (“LI”) and is developed as agricultural land with outbuildings. The property south of the application area is under the same ownership as the application area; it is zoned RR and is currently undeveloped agricultural land. East of the application area is property zoned SF-20 Single-family Residential (“SF-20”) and RR and is also undeveloped agricultural land. West of the application area is property zoned RR and SF-5 Single-family Residential (“SF-5”) and is developed with a farmstead and use for the airport and flying fields.

Similar extraction Conditional Uses were approved in 1973 for a site approximately one mile south of the application area and in 2001 for another site approximately 1,500 feet southeast of the application area.

The site is located approximately one mile south of Mid-Continent Airport. The recommended conditions of approval require compliance with applicable local, state and federal regulations. The applicant was supplied information from the Federal Aviation Administration Office (FAA) Advisory Circulars AC150/5200-33B titled *Hazardous Wildlife Attractants on or near Airports*. Staff has been in contact with Mid-Continent staff regarding the application, and has attempted to contact the FAA Program Manager. According to John Oswald, Manager of Airport Engineering and Planning, the FAA has responded in an email stating their objection to the proposal. Unfortunately, the information I provided Mr. Oswald at the time was preliminary and additional information has been gathered since then. I have attempted to contact Mr. Oswald and Glen Helm, FAA Program Manager, with additional information, a request for the FAA objection email and a proposal to meet with them and the applicant, but at the time of mail out, staff has not received a response. Staff will attempt to get the parties together for a meeting to resolve any issues before the September 11 MAPC meeting.

CASE HISTORY: Property to the south and east of the subject site (at the southeast corner of MacArthur and Ridge) was approved for a Conditional Use for the excavation of fill material on January 10, 2002 (CON2001-00061). The property is currently unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Agricultural Land with outbuildings
SOUTH:	RR	Agricultural Land
EAST:	RR, SF-20	Agricultural Land
WEST:	RR, SF-5	Farmstead / Airport and Flying Fields

PUBLIC SERVICES: The access drive to the subject site is located along Ridge Road, a paved two-lane, rural minor collector, section line road. The existing half-width right of way on this section of Ridge Road is 60 feet. The traffic count as of May 2007 was 1,905 cars per day (ADTs) on this section of Ridge. No street projects are included in the C.I.P, and the *2030 Transportation Plan* shows this section of Ridge remaining a two-lane arterial. The applicant is proposing one drive entrance off of Ridge Road.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this property as Employment/Industry Center within the Wichita 2030 Urban Growth Area. Employment/Industry Center includes uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The Wichita 2030 Urban Growth Area is a category that identifies Wichita’s urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and

infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

The majority of application area and the excavation site are within the FEMA 100 year flood plain and floodway. The Wichita Sedgwick County Subdivision Regulations allow for development within floodplains provided that buildings and public service facilities are elevated or flood proofed above the Base Flood Elevation.

The Unified Zoning Code (“UZC”) lists “Mining or Quarrying” as a Conditional Use in the RR zone district. The UZC lists 23 conditions with which “Mining or Quarrying” should comply; these conditions exist for public safety, and to mitigate any negative effects the extraction may have on surrounding properties. Not all of these conditions are applicable to the proposed fill material excavation. If the Planning Commission recommends modifications to one or more of the Unified Zoning Code conditions for the requested Conditional Use, the request will then be forwarded to the Governing Body for final action.

RECOMMENDATION: With the proper conditions in place, this proposal should not have a detrimental effect on the surrounding properties, as they are developed with agriculture, or well screened by existing natural vegetation. The conditions suggested below should mitigate potential negative impacts caused by this Conditional Use. Required permits and drainage plans should further ensure the safe operation of the Conditional Use. Existing services are adequate for the proposed Conditional Use. Because of its location in a flood plain, development of the application area for commercial or residential uses would be difficult.

For these reasons and based on information available prior to the public hearings, Staff recommends that the Conditional Use request be **APPROVED**, subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted on the site.
2. The excavation operation will have to abide by the rules set forth in the Federal Aviation Administration Advisory Circular 150/5300-33B “Hazardous Wildlife Attractants On or Near Airports” to prevent attracting any hazardous wildlife.
3. The operational plan shall illustrate which area is to be excavated and in what phase.
4. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
5. Adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbed wire fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.

7. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
9. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.
10. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
10. The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line.
11. Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.
12. The Conditional Use for the extraction operation shall be valid for a period of 10 years.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
15. Any on-site storage of fuels or chemicals must be approved by the Wichita-Sedgwick County Health Department.
16. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. Said plan shall be designed to minimize the discharge of potential contaminants into the Cowskin Creek. The extraction area shall be developed so as to not become a wetland area.
17. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.
18. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the application area is property zoned LI and is developed as agricultural land with outbuildings. The property south of the application

area is under the same ownership as the application area; it is zoned RR and is currently undeveloped agricultural land. East of the application area is property zoned SF-20 and RR and is also undeveloped agricultural land. West of the application area is property zoned RR and SF-5 and is developed with a farmstead and use for the airport and flying fields.

2. The suitability of the subject property for the uses to which it has been restricted: The application area could be developed for single-family residential use, but its location in a floodplain would make development of those residences difficult.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions provided in the Unified Zoning Code for this Conditional Use should prevent any detrimental effect on nearby property. These conditions work to mitigate any negative dust, noise, or environmental effects. The fencing requirement should prevent trespassing and accidents on this property. The Creek buffer and drainage plan requirements should prevent pollutants and sediment from affecting downstream properties. Prevention of the extraction area from becoming a wetland area will prevent the attraction of waterfowl and other birds to the application area, as the application area is within approximately 6,000 feet of an airport facility.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Comprehensive Plan* does not specifically address “borrow pits”; however, the plan does recognize the uniqueness of mining and extractive resources (e.g. sand, gravel, clay soils, etc.). The Plan recommends that the extraction use location be compatible with the built and natural environment. However, the *Comprehensive Plan* does identify this property as Employment/Industry Center within the Wichita 2030 Urban Growth Area. Employment/Industry Center includes uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The Wichita 2030 Urban Growth Area is a category that identifies Wichita’s urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.
5. Impact of the proposed development on community facilities: Traffic to and from the requested Conditional Use at this location will increase the daily trips on this section of Ridge; this increase should not exceed the safe capacity of this road.

DERRICK SLOCUM, Planning Staff indicated that the applicant and staff were asking for a deferral until the October 9, 2008, MAPC Hearing due to an incorrect ownership list. He said not all of the people required to be notified were notified.

When **CHAIRMAN DOWNING** polled the audience, it appeared that two individuals were present to speak on the item. There was brief discussion whether to hear public input at today’s meeting. It was suggested that staff check to see if the people could come back on October 9, 2008.

BOB PARNACOTT, ASSISTANT COUNTY COUNSELOR, said he thought it would be more appropriate to have comments on record at the official public hearing on the case on October 9, 2008.

MOTION: To defer item until the October 9, 2008, MAPC Hearing.

MARNELL moved, **ANDERSON** seconded the motion, and it carried (12-0).

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10. **Case No.: CON2008-39-** Linda Snook Trust, Attn: James Snook (owner/applicant), Baughman Company, Attn: Russ Ewy (agent) Request County Conditional Use for mining/quarrying (soil extraction) on property zoned RR Rural Residential on property described as:

The West Half of the Southwest Quarter of Section 35, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT beginning at the Northwest corner of said Southwest Quarter; thence East 225 feet; the. Along a 1 degree 25' curve to a point 90 feet South of the Northwest corner of said Southwest Quarter; thence North 90 feet to the point of beginning. Generally located the northeast corner of 151 Street West and Pawnee Avenue.

BACKGROUND: The applicant requests a Conditional Use to allow "Mining and Quarrying" on property zoned RR Rural Residential ("RR") for the excavation of fill material to be used on projects proposed on the west side of the city and county. The excavation on undeveloped property is located at the northeast corner of Pawnee and 151st Street West. The excavation will create a 20-acre pond, excavated to a depth of 12 to 14 feet, located approximately in the middle of the 76.75-acre tract, see the attached site plan. According to GIS, the average depth of the ground water is nearly 30 feet from the surface. The applicant proposes two accesses to the site, one approximately 2,000 feet north of Pawnee and the other being approximately 700 feet east of 151st Street West. Existing access appear to be located on 151st Street West, approximately 1,000 feet north of Pawnee. The site is not currently fenced, but fencing of the excavation area will be a condition of approval.

Some concern in this request is the potential for pollutants, sediment and erosion that could occur and enter the nearby waterways through storm water runoff. Existing and planted vegetation can help to remove pollutants from storm water runoff before entering the waterways. Other concerns that have been voiced are the access and the direction of truck movement, dust and mud, drainage and noise. These issues will be address as conditions of approval for the conditional use.

North of the application area is property zoned RR and is developed as a single-family residence and a farmstead. The property south of the application area is zoned RR and is developed as a farmstead. The property east of the application area is zoned RR and is developed with a single-family residence and a farmstead. Property west of the subject site is zoned RR and is developed with farmsteads.

CASE HISTORY: The property is currently unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	Farmstead
SOUTH:	RR	Farmstead
EAST:	RR	Farmstead
WEST:	RR	Farmstead

PUBLIC SERVICES: The property is located along Pawnee and 151st Street West, both two-lane, paved section line roads. The existing half-width right-of-way on these sections of Pawnee and 151st Street West is 25 feet. The standard for County section line roads is a half-width right-of-way of 60 feet, 75 feet at the intersections. There are no traffic counts for either of these roads at this location. No street projects are included in the C.I.P, and the 2030 *Transportation Plan* shows these roads remaining two-lane arterial section line roads. The applicant is proposing one drive onto Pawnee and one on to 151st Street West.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this property as Urban Development Mix within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses

predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

The Unified Zoning Code lists "Mining or Quarrying" as a Conditional Use in the RR zoning district. The Zoning Code lists 23 conditions with which "Mining or Quarrying" should comply; these conditions exist for public safety, and to mitigate any negative effects the extraction may have on surrounding properties. Not all of these conditions are applicable to the proposed fill material excavation. If the Planning Commission recommends modifications to one or more of the Unified Zoning Code conditions for the requested Conditional Use, the request will then be forwarded to the Governing Body for final action.

RECOMMENDATION: With the proper conditions in place, this proposal should not have a detrimental effect on the surrounding properties, as they are developed with agriculture and residential uses. The conditions suggested below should mitigate potential negative impacts caused by this Conditional Use. Required permits and drainage plans should further ensure the safe operation of the Conditional Use. Existing services are adequate for the proposed Conditional Use. For these reasons and based on information available prior to the public hearings, Staff recommends that the Conditional Use request be **APPROVED**, subject to the following conditions:

1. Dedication of right of way on Pawnee and 151st Street West to bring the application area in conformance with Subdivision Regulations. The instrument of dedication to be submitted to County Public Works prior to commencing operations.
2. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
3. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted on the site.
4. The operational plan shall illustrate which area is to be excavated and in what phase.
5. Adjacent to the perimeter of the extraction area, a minimum 48-inch high, five strand barbed wire fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.
6. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the

next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.

7. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
8. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical above any future water table.
9. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
10. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
11. The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right-of-way, or closer than 50 feet to any property line.
12. Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
15. Any on-site storage of fuels or chemicals must be approved by the Wichita-Sedgwick County Health Department.
16. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included within the fenced extraction operation shall be graded in accordance with the approved drainage plan. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drainage plan.
17. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.
18. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the application area is property zoned RR and is developed as a single-family residence and a farmstead. The property south of the application area is zoned RR and is developed as a farmstead. The property east of the application

area is zoned RR and is developed with a single-family residence and a farmstead. Property west of the subject site is zoned RR and is developed with farmsteads.

2. The suitability of the subject property for the uses to which it has been restricted: The application area could be developed for urban scale single-family residential use or possible commercial uses on the land at the intersection in the future.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions provided in the Unified Zoning Code for this Conditional Use should prevent any detrimental affect on nearby property. These conditions work to mitigate any negative dust, noise, or environmental effects. The fencing requirement should prevent trespassing and accidents on this property. The drainage plan requirement should prevent pollutants and sediment from affecting downstream properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this property as Urban Development Mix within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.
5. Impact of the proposed development on community facilities: Traffic to and from the requested Conditional Use at this location will increase the daily trips on this section of Pawnee and 151st Street West; this increase should not exceed the safe capacity of this road. The recommended 35-foot right of way dedication and 50-foot right of way dedication at the intersection would allow for further widening of Pawnee and 151st Street West, should an increase in traffic make widening necessary.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

Responding to **MITCHELL's** question concerning items #8 and #14, **SLOCUM** said those items came from supplemental regulations in the Unified Zoning Code.

FOSTER asked about a time limit on the excavation, and if ten years was appropriate.

SLOCUM responded that there was no time limit on this case and asked the agent's applicant to address what time limit would work for them.

BOB PARNACOTT, ASSISTANT COUNTY COUNSELOR, commented that they were working on updates to the Unified Zoning Code and requested language changes to reflect the proper agency names including the County Department of Environmental Resources and Fire District I.

SLOCUM acknowledged that those modifications would be made.

RUSS EWY, BAUGHMAN COMPANY, AGENT FOR THE APPLICANT said they agree with staff's recommendation. He said they had a 10-year time frame for the northwest site because the City of Wichita is rapidly approaching this area and that after the soil extraction is complete they will be in place to redevelop the property for urban density residential land uses.

FOSTER asked how they were going to insure good pond construction. He said he has seen homeowner's group end up spending thousands of dollars working ponds over.

EWY commented that the operational and redevelopment plan for this proposal was the same as any other residential subdivision where the pond is the central feature. He said platting and development will not occur for some time and that the code requires a conditional use permit for the soil extraction, which falls under the same set of regulations as sand extraction. He said development and construction of the pond, and bank stabilization and erosion controls are in line with what is typically expected with a residential subdivision.

JIM SNOOK, APPLICANT said pond quality was one of their concerns early on so they dug test holes along the waterway. He said the soil seemed cohesive enough, and sand seams were not found until they dug about 15-16 feet down. He said that is why they requested the 12-foot excavation; so they can have 3-4 feet of good clay that will hold water. He said Baughman performed a quick hydrology and determined what will be required to maintain a certain water level in the pond with the amount of water draining off adjacent properties and the water shed area.

RON SIPPEL, 2225 CHERRY LANE said his property abuts the property in question. He said he was concerned that Pawnee Avenue was the main thoroughfare to the Goddard school system and already generates an incredible amount of traffic. He said if they propose 120 homes at this location in the future, traffic would increase that much more. He said another concern was groundwater. He said some people in the neighborhood are on rural water. He said he has a well and asked if studies have been done on how this excavation will affect water quality in this area.

HILLMAN asked how deep **MR. SIPPEL'S** well was.

SIPPEL said his neighbor has a 90-foot well, but he wasn't sure how deep his well was since he only moved there two years ago.

ART KRUEGER, 1960 S. 152ST STREET WEST said his property abuts this property on the northern side. He said because his property is lower than this area, one of his major concerns was flooding. He said in the lower part of his yard, the water table is right there. He said there is a gully along the west north side of his property, which drains pretty well, but he said any more drainage from anywhere or soil that won't absorb water is going to flood him. He asked what consideration has been given to when the creek floods. He said that affects all the neighbors on the north side, which consists of approximately 82 acres and three homes. He said drainage is a major consideration for them. He said his well is 90-feet deep and that at six inches to one foot water comes up, which is just under his house. He also mentioned traffic on Pawnee and how difficult it was to get onto West Kellogg from 151st, 135th and 167th Streets. He said trucks used during the excavation process are going to have a major problem and that there will be accidents, that it is almost inevitable. He said he recommended a route down Pawnee. He also requested information on how digging a lake into an area will affect the ground water. He said he'd also like to see an extensive study of the grading and how that is going to be addressed. He said an 80 acre tract was lot of area to take out soil and put in a pond without knowing what is going to happen.

DIRECTOR SCHLEGEL commented that the item before the Commission today was a conditional use permit to allow soil excavation. He said zoning on the lot will remain Rural Residential until such time in future that the applicant applies to get the zoning changed. He said the site plan was submitted to show the Commission how the site would look after the soil excavation is completed. He said that submittal is a code requirement, but, added that this hearing was not for approval of that particular site plan today.

KRUEGER also asked what routes would be used to come in and out of the site. He said it shows one on Pawnee and one on 151st Street. He also mentioned the Cowskin Creek and how that might affect the Harbors Development.

FOSTER asked if someone from staff can mention the guarantees in the platting process that address the drainage issues.

KATHY SCHWARTZENBERGER, 2315 CHERRY LANE said her property also abuts this property. She said she also has a well that is 80-90 feet deep and that is a concern. She said she is also concerned about the amount of time during the day they would be doing excavating, air pollution, noise pollution, and the transference of the dirt. She asked about the hours of operation and whether it would be overnight as well? She said she shares concerns about the ground water also. She mentioned the dust, air pollution, noise, and inconvenience to residents. She said West Pawnee is only a two-lane road with very narrow shoulders. She said the truck traffic will create a hardship to area residents.

EWY said most of the questions he was hearing dealt with the next phase of the project, which was subdivision development. He said at that time, the drainage plan must be approved by County Public Works. He said there are eighteen standards that deal with erosion control and dust control in addition to other regulations. He said all of these concerns will be addressed through the conditional use process. He said truck traffic to and from the site will vary based on construction needs. He said this will not be a major plant facility rolling out trucks all day, every day for that 10-year period.

TAPE 2, SIDE 1

SNOOK commented that traffic safety is very important to them. He said they will probably use 151st Street and Kellogg and make right hand turns; they don't like to make left hand turns onto Kellogg. In addition, he said a lot of access will come down Pawnee to 119th Street. He said he has been in the business for 30 years and they understand all the issues.

DIRECTOR SCHLEGEL asked if **SNOOK** could address the earlier question concerning locations of the access points to the site.

SNOOK said on 151st Street close to West Highview Drive and off of Pawnee.

Responding to a question from **HILLMAN**, **SNOOK** said hours of operation will be from 6:30 A.M. – 6:30 p.m. (a 12 hour period).

MARNELL commented on the ground water concerns and asked if the applicant could live with the three foot above ground water separation being added to the conditions.

SNOOK said they have no objections to that requirement.

EWY agreed that could be added as part of the conditions. He said they can work with County Public Works on the depth to ground water issue.

MOTION: To approve subject to staff recommendation; change conditions to include a 10-year time span; separation from water table applicant agreed to work out with staff; and modification of language to reflect proper agency names mentioned by **MR. PARNACOTT**.

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

11. Case No.: DR2008-06: South Central Neighborhood Rezoning Initiative

Background: The *South Central Neighborhood Plan* was adopted as an element of *The Wichita-Sedgwick County Comprehensive Plan* in May 2006. The *South Central Neighborhood Plan* contains two initiatives pertaining to neighborhood zoning. Initiative 8.1 – Residential Rezoning recommends that residential properties in the neighborhood be rezoned to more closely reflect current and preferred future land uses. Initiative 10.1 – Development Standards recommends that zoning regulations for the neighborhood be changed to promote greater compatibility between business operations and residential areas. The *South Central Neighborhood Plan* supplements these initiatives with a future land use concept for the neighborhood.

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 initiate the zoning map and zoning code amendments recommended by the *South Central Neighborhood Plan*. Members of the South Central Implementation Committee presented their request at the August 21, 2008, meeting of the Advance Plans Committee, and Advance Plans Committee voted unanimously to recommend that the Metropolitan Area Planning Commission initiate the zoning map and zoning code amendments recommended by the *South Central Neighborhood Plan*.

The Advance Plans Committee also reviewed staff's proposed rezoning initiative process and tentative schedule and accepted the proposed process. The process proposed by staff would have the Advance Plans Committee oversee the South Central Neighborhood Rezoning Initiative.

Recommended Action: Initiate the zoning map and zoning code amendments recommended by the *South Central Neighborhood Plan* and assign the Advance Plans Committee to oversee the South Central Neighborhood Rezoning Initiative.

Attachments: Initiative 8.1 – Residential Rezoning
Initiative 10.1 – Development Standards
Appendix C – Land Use Concept
Letter from the South Central Implementation Committee
Proposed Rezoning Initiative Process and Tentative Schedule

SCOTT KNEBEL, Planning Staff presented the Staff Report.

KNEBEL requested that the MAPC initiate the zoning amendments, both the map amendments and zoning code amendments as recommended in the *South Central Neighborhood Plan* and assign the Advance Plans Committee to oversee the South Central Neighborhood rezoning process. He said the first meeting of the Committee was proposed to be on October 9, 2008. He concluded by stating that neighborhood representatives were present in support of the request.

There was brief discussion concerning an estimate of the cost of complying with overlay regulations; standard code restrictions and using the "carrot" approach to make it easier to develop uses the neighborhood desires; Capital Improvement Program budget items and costs (**KNEBEL** commented that he could provide those costs to **MITCHELL** after the meeting); and Tax Increment Financing Districts.

BILL DAVIS, SOUTH CENTRAL NEIGHBORHOOD ASSOCIATION, said he wanted to thank the Commission for listening to their presentation.

MOTION: To approve staff's recommended action concerning development of the plan.

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

The Metropolitan Area Planning Department informally adjourned at 3:31 p.m.

State of Kansas)
Sedgwick County) ^{ss}

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

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

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

(SEAL)