

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

April 10, 2008

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 10, 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; Darrell Downing; David Foster; Michael Gisick; Bud Hentzen; Hoyt Hillman; Ronald Marnell; John W. McKay Jr ; Debra Miller Stevens; Don Sherman and G. Nelson Van Fleet. David Dennis and Bill Johnson were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Derrick Slocum, Associate Planner; Neil Strahl, Senior Planner and Maryann Crockett, Recording Secretary.

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1. Approval of the March 27, 2008, MAPC meeting minutes:

MOTION: To approve the minutes as amended.

ANDERSON moved, **DOWNING** seconded the motion, and it carried (11-0).

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB 2007-41: Revised Preliminary and Final Plat of Sierra Hills 2nd Addition**, north side of Pawnee and west of 143rd Street East.

NOTE: This site is located in the County adjoining Wichita's city limits and annexation is required. The site is currently zoned SF-20 Single-family Residential and will be converted to SF-5 Single-family Residential ("SF-5") upon annexation.

This revised preliminary plat contains a revised street layout.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5 and allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of City water and sanitary sewer (laterals and mains) to serve the lots being platted.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. City Engineering has approved the drainage plan. County Engineering requests submittal of a drainage plan.
- E. County Engineering has required a petition for an eastbound left-turn lane. The guarantee may be provided through a City petition.

- F. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- G. The plat proposes one street opening to Pawnee. Complete access control is platted along the remaining street frontage. The plattor's text shall reference the dedication of access controls.
- H. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineer (ASACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- I. GIS has requested Bellaire be revised to Spring Hollow.
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. The applicant shall submit a covenant that provides four (4) off-street parking spaces per dwelling unit on each lot that abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- M. The plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

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

MOTION: To approve subject to staff recommendation.

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

2-2. SUB 2008-14: One-Step Final Plat of Smithmoor 11th Addition, south side of Harry and west of Greenwich Road.

NOTE: This is a replat of Lot 1, Block A of the Smithmoor Commercial Addition. The Smithmoor Commercial Community Unit Plan (DP-243) was also approved for this site.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of City water to serve all the lots being platted. Lots 2-6 have access to sewer. The applicant needs to extend sewer to serve Lots 1, 7, 8, and 9.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Engineering has approved the applicant's drainage plan.
- D. Due to the platting of a 32-foot residential street in a commercial zoning district, a restrictive covenant is needed limiting the site to single-family development.
- E. The Applicant shall guarantee the paving of the proposed streets.
- F. The Subdivision regulations discourage the inclusion of pipeline easements within the perimeter of residential lots. It is recommended that the pipeline crossing the south line of the plat be included within a Reserve(s). The applicant shall submit a revised plat to Staff prior to MAPC review.
- G. The plattor's text shall include reference to "a reserve" in the owner's certificate.
- H. The final plat tracing shall state in the plattor's text the purposes of the proposed reserves as well as the ownership and maintenance responsibilities.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.

- J. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. The Applicant needs to request a CUP adjustment as single-family residential uses need to be added as a permitted use.
- L. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of Smithmoor Commercial Community Unit Plan (DP-243).
- M. Since this plat proposes the platting of a 32-foot narrow street right-of-way, adjacent 15-foot street drainage and utility easements are needed.
- N. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- O. The applicant shall submit a covenant that provides four (4) off-street parking spaces per dwelling unit on each lot that abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- P. County Surveying advises that the benchmark needs a better description.
- Q. The pipeline building setback line should line up with the south line of the 20-foot utility easement.
- R. The 20-foot building setback on the west line of Lot 9 appears to scale at 15 feet.
- S. GIS has approved the street names.
- T. The recording information for all pipeline easements shall be indicated on the face of the plat.
- U. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- V. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- W. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- X. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- Y. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator

(Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- Z. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- AA. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- BB. Perimeter closure computations shall be submitted with the final plat tracing.
- CC. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- DD. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

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

PUBLIC HEARING – VACATION ITEMS

3-1. VAC2008-08: County request to vacate a portion of platted complete access control

APPLICANT/OWNER: Land Ventures, LLC, c/o William D Hayes

LEGAL DESCRIPTION: Generally described as vacating the platted complete access control to allow one (1) full movement drive along the 45th Street North frontage of Lot 1, Block A, Hedgecreek Estates Addition, Sedgwick County, Kansas

LOCATION: Generally located at the southeast corner of 45th Street North and 247th Street West (BoCC #3, inside Andale's Area of Zoning Influence)

REASON FOR REQUEST: Move platted/allowed drive off of 247th Street West to 45th Street North

CURRENT ZONING: The site and all adjacent and abutting properties are zoned RR Rural Residential ("RR")

The applicant proposes to remove the site's one (1) permitted/platted 30-foot drive/access along its 247th Street West frontage and relocate it on the site's 45th Street North frontage. The site is part of a large lot, single-family residential subdivision, the Hedgecreek Estates Addition. The site/lot and one other lot (Lot

2, Block B) are the only two lots in the subdivision that have no access onto its one platted public residential street. Both the current and proposed access onto the site are off of a section line road. 247th Street West is a paved, two-lane county highway. 45th Street North is a dirt/gravel, Sherman Township road. The 2030 Transportation Plan shows no change to the status of either of these roads. There is no public water or sewer on the site and the site is outside of any Rural Water District. The site appears to be in the Sedgwick County Electric Cooperative Assn., service area. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the site's north lot line. The Hedgecreek Estates Addition was recorded with the Register of Deeds May 25, 2006 (FILM-PAGE: 28784197).

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from the County Engineer, franchised utility representatives and other interested parties, Planning Staff recommends approval of the request to vacate a portion of platted complete access control 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 March 20, 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 complete access control and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted complete access control described in the petition should be approved with conditions:
- (1) Vacate the platted complete access control along the site's (Lot 1, Block A, Hedge Creek Estates Addition) 45th Street North frontage to allow one (1) 30-foot full movement drive, as approved by the County Engineer. Dedicate complete access control along the site's (Lot 1, Block A, Hedge Creek Estates Addition) 247th Street frontage.
 - (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 County Standards and at the applicant's expense, including the new driveway from private property onto public ROW and closing of any existing drives.
 - (4) 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) Vacate the platted complete access control along the site's (Lot 1, Block A, Hedge Creek Estates Addition) 45th Street North frontage to allow one (1) 30-foot full movement drive, as approved by the County Engineer. Dedicate complete access control along the site's (Lot 1, Block A, Hedge Creek Estates Addition) 247th Street frontage.
- (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 County Standards and at the applicant's expense, including the new driveway from private property onto public ROW and closing of any existing drives.
- (4) 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.

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

PUBLIC HEARINGS

SHERMAN in @1:37 P.M.

4. **Case No.: ZON2008-10** - Deferred from 3-27-08 MAPC Meeting – David Lowry (Owner); Christian Ablah (Applicant); Poe & Associates, Attn: Tim Austin (Agent) Request City zone change from "B" Multi-family and "MF-29" Multi-family to "LC" Limited Commercial on property described as:

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

AND

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

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

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

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

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

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

ADJACENT ZONING AND LAND USE:

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

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

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

RECOMMENDATION: The application area is small for most modern LC uses. To encourage the redevelopment of this site with land uses which will maintain a degree of compatibility with the residential land uses to the south and east, and to establish a new zoning classification on the property that is more in line with the commercial and office land uses to the west and north, and which recognizes the

fact that this site fronts onto a arterial street, staff recommends that the request for LC not be approved, but instead staff recommends that the property be zoned NR. Neighborhood Retail zoning would establish a transition area between the existing non-residential uses in the area and the neighborhood to the south and east because the NR districts limits individual retail uses to a maximum size of 8,000 square feet; restaurants are limited to a maximum size of 2,000 square feet and drive-through service is prohibited. Other development standards also apply to the NR district, but the NR district would provide for land uses which typically produce fewer vehicular trips than would be generated by LC land uses.

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

This recommendation is based on the following findings:

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

established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development. The Wichita City Council found that OC zoning or its current equivalent of NR zoning was appropriate in 1990.

6. Impact of the proposed development on community facilities: All services are in place, and any increased demand on community facilities can be handled by current infrastructure.

DERRICK SLOCUM, Planning staff presented the staff report. He pointed out a misprint and said the parcel was *not* subject to platting.

FOSTER asked if the unique feature of the channel on the east side of the property was discussed with the applicant.

SLOCUM commented that staff has had several discussions with the applicant. He also mentioned that the applicant was willing to keep uses to those allowed under “NR” Neighborhood Retail.

HENTZEN asked if there wasn’t “LC” Limited Commercial zoning to the east of the site.

SLOCUM commented that the area to the east is zoned “GO” General Office. He said over the hill towards Edgemoor, the area is zoned “NR,” which staff believes will produce fewer vehicular trips than “LC.”

HENTZEN commented that he didn’t think the City was going to stop “LC” development along east Central.

Responding to a question from **GISICK** concerning the impact of “LC” zoning, **MILLER** explained that current policies in the Comprehensive Plan, which was approved by past planning commissioners, addresses commercial development of arterial streets. He said “NR” with its reduced list of uses is usually more appropriate in areas abutting residential areas.

STEVENS MILLER said she understood there was some controversy regarding development of the adjacent zoning across the street and to the west. She said her concern was that they are struggling to develop those areas already that are zoned at the higher level. She asked why the MAPC was being asked to provide more “LC” zoning.

DIRECTOR SCHLEGEL suggested that she address that question to the applicant.

MCKAY mentioned the drainage on the east side of the property and asked if staff thought that was a natural barrier for the “LC” zoning.

SLOCUM responded that the drainage on the east was not used when determining the zoning recommendation.

TIM AUSTIN, POE & ASSOCIATES, AGENT FOR THE APPLICANT, said the applicant was willing to compromise and limit the “LC” request to those uses that are normally found in “NR” zoning. He mentioned size limitations for restaurants and retail establishments, but added that they would like the “LC” zoning to allow more flexibility. He said one of the reasons the area has not developed is because of the size of the parcels. He said this is an older community, platted many years ago, and that the depths of the parcels don’t lend themselves to “LC” development. He said this parcel was part of a property assembly by the applicant.

MITCHELL commented since the area was in the flood plain, how was the applicant planning to redevelop the area without harming properties up or downstream.

AUSTIN responded that they are currently conducting a flood study which will provide more detailed information. He mentioned Dry Creek and the fact that the Federal Emergency Management Agency (FEMA) had altered the flood map. He said the floodway stops at First Street and picks up again north of Ninth Street. He said issues of developing existing flood plains are addressed prior to issuance of the building permit and that certain rules and guidelines must be met, one of which was completion of the flood study. He also mentioned that the City of Wichita has addressed the flood plain issue in the Capital Improvement Program (CIP) budget for 2009-2011. He said the long-term plan is to put the drainage in a box and put it underground.

MITCHELL asked if they had made sure there was enough space for the proposed facility and between properties within the rezoned property?

AUSTIN commented that MAPC staff had dropped that requirement. He also mentioned other locations already developed in the flood plain. He said they will have an agreement with the City of Wichita and FEMA, pay flood insurance, etc. He added that they are limited to building within the same existing footprint. He commented that the flood study would answer some of those questions.

MITCHELL asked about deferring the application until they have answers to some of those questions.

AUSTIN responded if **MITCHELL** feels it is necessary to delay the project; the applicant and agent do not.

MITCHELL said he would like to solve those problems before the zoning change.

FOSTER asked about whether it was more appropriate to seek "LC" zoning with exceptions or consider use of a protective overlay relative to the flooding issue.

SLOCUM responded that whichever way is use, the applicant will have to deal with the flood issue. Staff did not think one way was better than the other.

MOTION: To defer the application until drainage and flooding questions are answered. After further discussion, he added time certain to 60 days (June 5, 2008 MAPC Meeting).

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

Responding to questions, **AUSTIN** stated that the flood study should be done within 60 days and that the developer was anxious to get the project completed. He said they did not expect to defer the project for two years

JOE LANG mentioned that if the MAPC set the deferral date at this meeting, a new notice would not need to be advertised.

5. **Case No.: ZON2008-14** - John Lawson (Owner); Lance Brawner (Agent) Request City zone change from "LC" Limited Commercial to "OW" Office Warehouse on property described as:

Parcel 1:

The north 30 feet of the east 140 feet of Lot 44 and the east 140 feet of Lot 45, East Urbandale Addition, Sedgwick County, Kansas.

Parcel 2:

Lot 41, except the east 282.46 feet and & Lot 42, except the east 282.46 feet, East Urbandale Addition, Sedgwick County, Kansas.

Parcel 3:

Lot 43, except the east 210 feet, & East Urbandale Addition, Sedgwick County, Kansas.

Parcel 4:

The east 210 feet of Lots 43, 44 and 45, except the north 30 feet of the east 140 feet of Lots 44 and except the east 140 feet of Lot 45, & East Urbandale Addition, Sedgwick County, Kansas.

Parcel 5:

Lot 44, except the east 210 feet and Lot 45, except the east 210 feet, East Urbandale Addition, Sedgwick County, Kansas.

Parcel 6:

Lot 46, and the east 25 feet of Lot 47, except the north 5 feet for road; East Urbandale Addition, Sedgwick County, Kansas. Generally located on the southwest corner of 53rd Street North and Arkansas Avenue.

BACKGROUND: The application area is zoned LC Limited Commercial (“LC”) and is used for medical equipment warehousing and distribution. Warehousing is not a permitted use in the LC district; therefore the applicant requests OW Office Warehouse (“OW”) zoning. The platted site is located at the southwest corner of West 53rd Street North and North Arkansas. The northeast half-acre of this site is developed with a commercial/warehouse building; the remainder of the five-acre site is undeveloped. The site has significant vegetation along the west property line, and at the southwest corner. No screening fences exist on the site, and the south property line is not as well landscaped. Loading areas on the site are screened from the south neighbors by the building.

North of the site, across 53rd Street, are SF-5 Single-family Residential (“SF-5”) zoned residences, a legal non-conforming nursery/garden center, and a church. South and west of the site are SF-5 zoned single-family residences. East of the site, across Arkansas, is vacant LI Limited Industrial (“LI”) zoned property under Protective Overlay PO-85. Further east is a rail corridor, and industrial uses within Park City.

CASE HISTORY: The site consists of portions of Lots 41 through 46 of the East Urbandale Addition, platted in 1912. The building on the site was constructed in 1975.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residential, church, nursery and garden center
SOUTH:	SF-5	Single-family residential
EAST:	LI	Vacant, rail corridor, industrial uses in Park City
WEST:	SF-5	Single-family residential

PUBLIC SERVICES: 53rd Street North is a 4-lane arterial with a 30-foot half width right-of-way (ROW) at this location. North Arkansas is a 2-lane arterial with a 25-foot half width ROW at this location. The site parking lot has access from both 53rd and Arkansas. The 2030 Transportation Plan designates both of these arterials to remain in their current configuration. The site is approximately one mile from I-135 via 53rd Street North. No traffic counts are available for either of these streets at this location. Municipal water is available at the site; municipal sewer is not available at the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Local Commercial.” The Comprehensive Plan Commercial Locational Guidelines state the following: commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion; commercial development should have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses; commercial uses should locate in compact clusters or nodes versus extended strip developments and commercially-generated traffic should not feed directly onto local residential streets.

The Unified Zoning Code (UZC) would require screening between single-family residential development and any future development on this site, and would require setbacks from all property lines. Future improvements on the site would require a landscape plan.

RECOMMENDATION: The current warehouse use has operated for some time at this location without any noticeable complaints. The current warehousing use has less impact on surrounding neighbors than many uses permitted by right under LC zoning, such as convenience stores and service stations. The OW district has significantly fewer permitted uses than the LC district; typical uses permitted in OW but not in LC include warehousing, wholesale business, and recycling processing centers.

This site is largely undeveloped; code requirements for setbacks, screening, and buffers will ensure that future improvements have no negative effect on surrounding neighbors. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the site, across 53rd Street, are SF-5 Single-family Residential (“SF-5”) zoned residences, a legal non-conforming nursery/garden center, and a church. South and west of the site are SF-5 zoned single-family residences. East of the site, across Arkansas, is vacant LI Limited Industrial (“LI”) zoned property under Protective Overlay PO-85. Further east is a rail corridor, and industrial uses within Park City.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed under the current zoning with typical retail/commercial uses. However, this may not be a desirable retail location due to proximity to other industrial uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request would allow all land uses permitted in OW zoning on the site. The OW district has significantly fewer permitted uses than the LC district. Uses permitted in OW but not in LC include warehousing, wholesale business, tattoo and piercing, research services, and recycling processing centers.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Local Commercial.” The Comprehensive Plan Commercial Locational Guidelines state the following: commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion; commercial development should have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses; commercial uses should locate in compact clusters or nodes versus extended strip developments and commercially-generated traffic should not feed directly onto local residential streets.
5. Impact of the proposed development on community facilities: The proposed zone change should have no increased impact on community facilities. Uses permitted under LC could have a greater impact on community facilities than uses permitted under OW zoning.

MOTION: To approve subject to staff recommendation.

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

- 6. **Case No.: ZON2008-15** – Estate of Lela Vireinia Tanner (Dale Tanner)/Mark Savoy Request City zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as:

The West 250 feet of the South 290 feet of the Southeast Quarter, Section 28, Township 27, Range 2 East of the 6th P.M., Sedgwick County, Kansas. Generally located 10402 east Harry (north of Harry, between Todd and Shiloh).

BACKGROUND: The applicant is seeking LC Limited Commercial (“LC”) zoning for 1.32 acres located on the north side of east Harry Street, approximately 2,600 feet west of Greenwich. The site is zoned SF-5 Single-family Residential (“SF-5”), and developed with what appears to be a vacant residence. The site has 250 feet of frontage along Harry Street, with two driveways.

Property to the east is zoned SF-5 and developed as a single-family residence on a large lot that wraps around to the north of the applicant’s site. Further east of the site is a utility substation, also zoned SF-5. Further north of the next door neighbor’s property is Reserve C of the Crystal Creek Addition, zoned SF-5, which is a single-family residential neighborhood. South of Harry Street and a drainage ditch are single-family residences, also zoned SF-5. West of the site is a church, zoned GO General Office (“GO”) and subject to Protective Overlay 94. PO-94 prohibits the following uses: group residence, limited; group residence, general; correctional placement residence, limited; correctional placement residence, general and hotel or motel; limits residential development to a maximum density of 17.4 dwelling units per acre and limits building height to 45 feet.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family Residential; large-lot single-family, drainage and single-family residential subdivision
SOUTH:	SF-5	Single-family Residential; single-family subdivision
EAST:	SF-5	Single-family Residential; single-family residence
WEST:	GO	General Office, subj. to PO-94; church

PUBLIC SERVICES: Harry Street is classified as four-lane arterial, and has 60 feet of half-street right-of-way, which is the current standard. All other municipal services are available or can be extended.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” map depicts this site as appropriate for “urban residential” uses. Commercial Location Guideline Number 1 contained in *The Wichita-Sedgwick County Comprehensive Plan* states that commercial sites should be encouraged to locate near arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. Guideline Number 3 states that commercial sites should have site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses. Guideline Number 4 states that commercial uses should be located in compact clusters or nodes versus extending strip developments. As can be seen by the zoning and land use pattern surrounding the site, approval of LC zoning at this location at this time would place a spot of LC zoning in the midst of SF-5 zoned single-family uses and a GO zoned church property.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request for LC Limited Commercial zoning be DENIED. However, staff recommends that GO General Office zoning be APPROVED, subject to platting within one year and the following Protective Overlay development standards:

- 1. The following uses shall not be permitted: group residence, limited; group residence, general;

- correctional placement residence, limited; correctional placement residence, general; and hotel or motel.
2. Residential development shall be limited to a maximum density of 17.4 dwelling units per acre.
 3. Buildings shall be limited to a maximum height of 45 feet.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property is located at a mid-mile location with frontage on an arterial street. SF-5 zoning and single-family residential uses are located on three sides of the property with a GO General Office lot developed with a church located to the west.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5, Single-family Residential which permits a limited number of uses; however the site could continue to be used for residential purposes. The current home appears to need some level of repair, and its location fronting a four-lane arterial makes it less likely to remain attractive for residential use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The staff recommendation for GO General Office zoning subject to a Protective Overlay is the same zoning and use restrictions that were placed on the church property to the west. Approval of LC Limited Commercial zoning would introduce retail and office uses not found now in this immediate area. There are lots with LC zoning located further east and west of the application area; however they are extensions of LC zoning initially located at the intersection of section line roads.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial presumable could cause the applicant a relative economic loss; however the recommendation for GO General Office zoning subject to a Protective Overlay minimizes the potential loss. Approval would introduce retail or office uses that are not present today in the immediate vicinity of the application area, which could diminish surrounding owners' use and enjoyment of their property.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted plan depicts this area as appropriate for residential uses, not commercial or office uses. With the approval of the GO zoning on the property to the west, GO zoning is open for consideration. As indicated above, commercial uses should be located in compact clusters or nodes versus extending strip developments. Limited Commercial zoning at this location is not consistent with this adopted location guideline.
6. Impact of the proposed development on community facilities: LC uses would increase the average daily traffic volume generated by this site; however community facilities are in place to accommodate anticipated uses.

DALE MILLER, Planning staff presented the staff report.

MARK SAVOY, AGENT FOR THE APPLICANT, said the property owner had consulted a commercial real estate agent on disposal of the property and that was the driving force behind their request so they could market the property as neighborhood friendly. He said they believe the area is convenient for neighborhood personal care type services. He said they would like zoning to allow personal services uses and not worry about retail. He said they would like to keep the same restrictions as neighborhood retail zoning because it was not appropriate to redevelop this as residential. He said they had changed their request from "LC" Limited Commercial to "NR" Neighborhood Retail.

Responding to a question from **MITCHELL, MILLER** commented that the staff report was based on the applicant's initial request for "LC Zoning. He said "NR" was more neighborhood friendly and that staff was willing to work with the applicant on that or the MAPC could defer the application to a later date. Responding to further questions, **MILLER** added that staff feels "NR" is appropriate for the area and that they could eliminate some uses such as general retail by use of a protective overlay.

MOTION: To approve Neighborhood Retail to exclude general retail.

HILLMAN moved, **HENTZEN** seconded the motion.

HENTZEN asked specifically what is being excluded.

GISICK said he preferred to go ahead and defer the application until staff and the applicant can develop an appropriate list of the exclusions.

There was considerable discussion and review of the definition of General Retail in the Unified Zoning Code.

Responding to a question from **GISICK** as to whether a beauty parlor or barber shop could sell hair care and other products under that zoning, **MILLER** commented that sales of products could be included under personal care uses.

TAPE 1, SIDE 2

SUBSTITUTE MOTION: To defer the application until the applicant and staff can confer and come back to the MAPC with a clear definition of what is and is not allowed in the protective overlay by the next Planning Commission meeting (April 24, 2008).

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

8. **Case No.: CUP2008-05/ZON2008-07** Deferred from 3-13-2008 MAPC Meeting – CBB Northlakes, LLC, Attn: Kurt and Brad Bachman (Owners); MKEC Engineering, Consultant c/o Brian Lindebak (Agent) request the creation of a city Community Unit Plan with a rezone for multi-use development on property described as:

A tract of land lying in the West Half of Section 24, Township 26 South, Range 1 West, of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:

A tract of land lying in the West Half of Section 24, Township 26 South, Range 1 West, of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:

COMMENCING at the East Quarter corner of said Section 24, thence on a Kansas coordinate system of 1983 south zone grid bearing of S89°15'47"W, 55.00 feet to the POINT OF BEGINNING, thence parallel with and 55.00 feet west of the east line of said Southeast Quarter S00°42'24"E, 580.27 feet to the north line of Key West Street right-of-way; thence along the north line of said Key West Street right-of-way, S88°23'36"W, 977.67 feet to the southeast corner of Lot 1, Block 1, The Moorings Tenth Addition, an addition to Wichita, Sedgwick County, Kansas; thence along an easterly line of said Block 1 for the next five courses, N01°36'24"W, 155.00 feet; thence N29°18'36"E, 360.06 feet; thence N00°46'02"W, 352.85 feet; thence

N48°33'38"W, 428.14 feet; thence N41°26'22"E, 415.48 feet to a point on the south line of a 105.00 foot drainage-way dedication said point being on a curve to the left, thence along said to the left having a radius of 1262.63 feet, a central angle of 28°35'23", a tangent length of 321.72 feet, the long chord of which bears S67°32'47"E for a distance of 623.52 feet with a radial line in of N36°44'54"E and a radial line out of S08°09'31"W for an arc length of 630.03 feet to a point; thence N89°13'58"E, 265.00 feet to a point lying 55.00 feet west of the East line of said Northwest Quarter; thence parallel with and 55.00 feet west of said East line, S00°46'02"E, 574.37 feet to the POINT OF BEGINNING.

TOGETHER WITH,

COMMENCING at the East Quarter corner of said Section 24, thence on a Kansas coordinate system of 1983 south zone grid bearing and along the East line of the Northeast Quarter, said Section 24 of N00°46'02"W, 769.39 feet; thence S89°13'58"W, 55.00 feet to the POINT OF BEGINNING, thence S69°30'45"W, 268.54 feet to a northerly corner of a 105.00 foot drainage-way dedication said point being on a curve to the right, thence along said curve to the right having a radius of 1157.63 feet, a central angle of 55°50'54", a tangent length of 613.56 feet, the long chord of which bears N53°42'45"W for a distance of 1084.24 feet with a radial line in of N08°21'47"E and a radial line out of S64°12'42"W for an arc length of 1128.39 feet to a point on the south line of the Northeast Quarter of the Northeast Quarter of said Section 24; thence along said south line of the Northeast Quarter of the Northeast Quarter, said Section 24, N89°39'27"E, 1118.11 feet to a point lying 55.00 feet west of the east line of said Northeast Quarter; thence parallel with and 55.00 feet west of said east line, S00°46'02"E, 554.44 feet to the POINT OF BEGINNING, EXCEPT, Lot 1, Block 1, North Sanitary Sewer Addition, Wichita, Sedgwick County, Kansas. Generally located South of N. 53rd St. and west of N. Meridian Ave.

BACKGROUND: The applicant proposes to create a commercial and office Community Unit Plan containing approximately 18.07 acres with two parcels located approximately one-quarter mile south of the intersection of 53rd Street North and North Meridian Avenue. (The initial application included a Parcel 3, containing 18.31 acres that permitted MF-18 Multi-family Residential ("MF-18") and Neighborhood Office ("NO") uses. Parcel 3 has been deleted from this request.) The application area is currently zoned SF-5 Single-family Residential ("SF-5").

Parcel 1 (11.25 acres) is located along Meridian Avenue, 1,323 feet south of the intersection of 53rd and Meridian; the proposed zoning being LC Limited Commercial ("LC"), except: group residence, general and limited; correctional placement residence, general and limited; recycling collection station, private; utility, major and minor; heliport, kennel, boarding and breeding and training; night club in the city and county; pawn shop, sexually oriented business, cemetery, all industrial, manufacturing and extractive uses. Queuing for drive-through lanes shall not direct vehicle headlights onto single-family lots. Parcel 1 is also located just north of a proposed drainage-way dedication. Parcel 1 is contiguous to the City of Wichita's existing sanitary sewer lift station on three sides.

Parcel 2 (6.82 acres) is also situated along Meridian Avenue, but south of the proposed drainage-way and north of Keywest Street. Proposed zoning for Parcel 2 is NR Neighborhood Retail ("NR") except: group residence, limited; correctional placement limited; utility, minor; pawn shop; all industrial, manufacturing and extractive uses; all uses permitted in the MF-18 Multi-family Residential ("MF-18") zone district and animal care, limited. Queuing for drive-through lanes shall not direct vehicle headlights on to single-family lots.

Reserve A (0.79 acres) is situated between Parcels 2 and 3 to the north and Keywest Street to the south. Reserve A is designated for open space, screening, sidewalks, berms, landscaping, irrigation and utilities confined by easements. The reserve initially allowed for two (2) possible accesses, one through to Parcel 2 and one for Parcel 3, connecting with Keywest Street. The access point from Keywest to the now deleted Parcel 3 has been eliminated from General Provision 14.

In any parcel, drive-through or in car service (for restaurants, banks, etc, service station, fuel outlets or gas pumps) shall not be permitted within 200 feet of any single-family residential lot.

The proposed zoning pattern would confine the more intensive uses to Parcel 1 in the northern part of the CUP, away from any large concentration of single-family residences and buffered from the rest of the CUP by a 105-foot drainage easement. The uses permitted by the CUP are only those uses permitted by right and not by conditional use.

The CUP has a maximum building coverage of 30 percent, maximum gross floor area of 35 percent and a maximum building height of 35 feet. The buildings would have uniform architectural compatibility and share similar lighting elements, with a maximum height of 25 feet for the light poles, except 15 feet when within 100 feet of residential zoning or residential uses, and share a similar landscape palette. The CUP requires internal circulation among parcels and cross-lot circulation.

All parcels are subject to the requirements of the Sign Code for the City of Wichita for the LC zoning district. Freestanding signs would be monument style with shared elements and a maximum height of 25 feet. The recommendation for the sign plan is to keep the amount of signage within the range of the 0.8 x linear frontage for LC on North Meridian Avenue. No signs will be allowed along Keywest Street and no lighted signs shall be allowed to face the single-family residential lots to the south and or west. Flashing signs (except time, temperature, public service messages) moving, portable, billboard and off-site signs are prohibited. A six to eight foot high masonry wall is designated along the west, northwest and north property lines adjoining SF-20 and SF-5 zoning.

Currently, the property to the north of Parcel 1 is zoned SF-20 Single-family Residential (“SF-20”), owned by a church and is vacant farmland. The property to the south of Parcel 2 is zoned SF-5 and is developed with single-family residences. The property located east of the proposed CUP, along north Meridian Avenue, is developed with single-family residences or is farmland and zoned SF-5. The land to the west (now the deleted Parcel 3) is vacant and also zoned SF-5.

The proposed CUP is located ¾ of a mile from both the Little Arkansas and the Big Arkansas Rivers. The proposed CUP is located in the flood hazard zone “X.” Zone X is the flood insurance rate zone that corresponds to areas outside the 100-year floodplains, areas of 100-year sheet flow flooding where average depths are less than 1 foot, areas of 100-year stream flooding where the contributing drainage area is less than 1 square mile, or areas protected from the 100-year flood by levees. No Base Flood Elevations or depths are shown within this zone.

CASE HISTORY: The entire application area is currently unplatted and undeveloped. The southern 1/3 of the application was approved for a CUP, The Moorings Community Unit Plan (CUP DP-78), on January 11, 1983. The particular portion of The Moorings CUP that is within the current application is currently vacant and has not been developed. The southern half of this proposed CUP was also approved to permit sand and gravel extraction through the Board of Zoning Appeals on June 26, 1990. At this time, the area of the proposed CUP is vacant with no signs of extraction or any other developments.

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-20” Single-family Residential	Vacant Agricultural Land
EAST:	“SF-5” Single-family Residential	Single-family residences
SOUTH:	“SF-5” Single-family Residential	Single-family residences
WEST:	“SF-5” Single-family Residential	Single-family residences

PUBLIC SERVICES: North Meridian Avenue is classified as a 4-lane, paved principal arterial street. 53rd Street North, west of Meridian, is a paved 2-lane collector street, while 53rd Street North east of Meridian, is a paved 4-lane minor arterial. Keywest Street is a paved 2-lane collector street. The half-street right-of-way for southbound Meridian along the east property line of the proposed CUP is 55-feet, except along the south 260 feet of the east property line where the half right-of-way is 50-feet. A 120-

foot right-of-way is the standard for section line and arterial roads, equating to a 60-foot half-street right-of-way. There will need to be a dedication of right-of-way along the east property line during the time of platting.

Traffic counts, according to the Average Daily Traffic Count Map revised in May 2007, counted traffic on north Meridian, at the intersection with 53rd Street North at 17,273 ADT's (Average Daily Trips). Traffic counts along 53rd Street North, at the intersection with north Meridian Avenue are 9,897 ADT's. The mid-mile traffic count for north Meridian Avenue, between 53rd Street North and I-235 is 11,551 ADT's, while the count at the intersection of Meridian and I-235 is 22,659 ADT's.

Proposed access into the CUP follows access management guidelines, consisting of two full movement openings onto North Meridian Avenue, and one possible full movement openings onto Keywest Street, through Reserve A of the proposed CUP. Of the two full movement openings accessing north Meridian Avenue, one access to Parcel 2, will align with Harborlight Street, which accesses the Harbor Isle Second Addition. The second opening into Parcel 1 is proposed to be located across from unplatted property located south of the intersection of north Meridian Avenue and 51st St. North. The possible opening along the south side of the Parcel 2 would be located along the east 250-feet of the south property line.

Municipal services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide, Map as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "urban residential." The CUP and proposed zoning does not entirely conform to the future Land Use Guide Map due to the proposed commercial zoning. However, Parcel 1 of the proposed CUP could be developed with single-family or duplex uses as those residential uses would be permitted uses per the proposed CUP. The proposed changes to Parcel 2, which prohibits all uses permitted in the MF-18 district, would now exclude single-family or duplex uses.

In terms of conformance with commercial goals/objectives/strategies and locational guidelines, it conforms with the **Commercial/Office Objective** to "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses," as well as **Strategy III.B2** of integrating the development of out parcels in relation to planned retail centers through shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The proposed CUP incorporates architectural and landscape requirements, parking lot elements and lighting consistency, restrained signage, cross-lot circulation, a site circulation plan, and combined ingress-egress. **Strategy III.B.3** seeks to reduce access points along arterial streets; the number of access points requested on the CUP is within the range allowed by urban standards of the Access Management Policy. **Strategy III.B.6** seeks to channel traffic generated by commercial activities to the closest major thoroughfare with minimum impact upon local residential streets; the major access points for this proposed CUP directs traffic onto North Meridian Avenue.

Commercial Locational Guideline #1 of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets. The proposed development complies with this guideline. **Commercial Locational Guideline #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use, **#4** recommends compact clusters versus extended strip development, and **#5** stated that commercially-generated traffic should not feed directly onto local residential streets.

The **Office Locational Guideline #1** of the *Comprehensive Plan* recommends that office uses should generally be located adjacent to arterial streets, **#3** recommends that local, service-oriented offices should be incorporated within or adjacent to neighborhood and community commercial developments, and **#4** advises that low-density office uses can serve as a transitional land use between residential uses and uses of a higher intensity.

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

- A. APPROVE the zone change (ZON2008-07) to LC and NR, subject to the development guidelines contained in DP-311, and platting within one year;
- B. APPROVE the Community Unit Plan (DP-311), subject to the following conditions:
 1. Guarantee decel lanes and left turn lanes into full movement openings at time of platting.
 2. Prohibit drive-through windows located within 200 feet of residential zoning and ensure queuing lanes for drive-through windows do not align vehicle headlights facing residential zoning.
 3. Non-lighted signs are allowed to face towards the south and west property lines.
 4. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 5. 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.
 6. The ordinance/resolution establishing the zone change shall not be published until the platting has been recorded with the Register of Deeds.
 7. Prior to publishing the ordinance/resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-311) includes special conditions for development on this property.
 8. 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:** Property surrounding the proposed CUP is zoned SF-5 or SF-20 and is undeveloped or developed with single-family residential or agricultural uses. Land to the west of the application area is in the same ownership as the proposed CUP. Land further to the west is also owned by the applicant but platted for residential use. Currently, the property to the north is zoned SF-20 Single-family Residential and is currently vacant farmland, but is owned by a church. The property located south of Keywest is zoned SF-5, and is developed with single-family residences. The property to the east of Parcel 2, along North Meridian Avenue, is developed with an SF-5 residential development, Harbor Isles. The property located east of the Parcel 1 is also zoned SF-5, but is predominately vacant farmland with one single-family residence. The proposed CUP is $\frac{3}{4}$ of a mile from both the Little Arkansas and the Big Arkansas Rivers. This area is a transition from farm activity to more urban uses.
2. **The suitability of the subject property for the uses to which it has been restricted:** The *Comprehensive Plan* does not recognize local commercial use of the property; however, the plan does recognize local commercial at the intersection of 53rd Street North and North Meridian Avenue, located 600 feet north of the proposed LC zoning within this proposed CUP. The area, according to the *Comprehensive Plan*, is shown as suitable for "urban residential," and could be developed as such.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The CUP will alter the character of the area by introducing non-residential development at a mid-mile location or is not an extension of existing non-residential zoning. However, the site is abutting a

sanitary sewer lift station, and is an awkwardly shaped remnant of a larger tract previously owned by the applicant that had significant arterial street frontage. Over the years staff has been advised by various developers that they sometimes have difficulty selling single-family lots that front an arterial street. The development standards imposed by the CUP will mitigate anticipated negative effects on surrounding property.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide, Map as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “urban residential.” The CUP and proposed zoning does not entirely conform to the future Land Use Guide Map due to the proposed commercial zoning. However, the applicant has incorporated virtually all of the design features recommended by the Comprehensive Plan, and discussed above, to minimize potential negative impacts between different uses: architectural controls, lighting standards, building height and signage. The site also utilizes generally accepted land use principles by buffering more intensive uses from less intense uses. The site will comply with other code required buffering techniques such as masonry wall screening, landscaping, and access controls.
5. Impact of the proposed development on community facilities: The development will add traffic to the arterial streets and increase potential demand for improvements to the arterial streets with possible acceleration and deceleration lanes in the future. Other municipal services are available or can be extended through platting.
6. Opposition or support of neighborhood residents: There have been many inquiries about this application, and there was enough opposition at a District VI Advisory Board meeting for the applicant to revise his request.

FOSTER reported that he had received a phone call on this case expressing a concern about traffic. He asked staff to review the development guidelines, specifically items 11B. and C concerning signalization.

MILLER said those issues will be decided at platting on a case-by-case basis.

FOSTER asked about staff’s recommendation on the deceleration lane.

MILLER staff recommendations were based on the City Traffic Engineer’s recommendation.

Responding to **FOSTER**’s comment concerning use of walls along 51st Street north of parcel #1, **SLOCUM** explained that the first property line, not the street, ends at North Meridian.

Responding to **HILLMAN**’s question concerning neighborhood use of parcel #3, **SLOCUM** said the applicant could answer that question.

GENE RATH, MKEC, AGENT FOR THE APPLICANT, said there have been several meetings concerning the application including two DAB VI meetings. He said that parcel #3 has been removed from the application. He said currently parcel #1 is zoned single family and that they could possibly plat a connection to parcel #3, which is zoned multi-family and office; however, parcel #3 has been taken off table for now. He said it is up to the developer to decide what they may want to do in the future. He said there could be some type of access agreement on parcel #2 at the time of platting. He said a dentist office is planned for parcel #2 and general office is planned for parcel #1. He mentioned the City of Wichita pump station and said that “LC” uses would be compatible with the area. He added that both tracts only have access to Meridian. He said deceleration and left turn lanes will be addressed at the time of platting. He commented that Parcel #2 will primarily be office uses, which will not generate near as much traffic as restaurants and other “LC” uses, so it may not warrant the need for right and left turn lanes.

ROBERT SCHRECK, 4769 PORTWEST IN THE MOORINGS, mentioned development of the Wal-Mart and other commercial development in the area and that a deceleration lane and left turn lane was needed and should have been required when the application was approved.

MOTION: To approve subject to staff recommendation.

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

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9. **Case No.: CUP2008-10 and ZON2008-13 (City) and CUP2008-11 and ZON2008-16 (County)** William H. Becker Jr., and Marilyn J. Becker Living Trust and Alan S. Girrens (owners); Ruggles & Bohm, P.A., c/o Terry Smythe (Agent) Request Creation of DP-312 Girrens Addition Commercial Community Unit Plan, a joint City (CUP2008-10) and County (CUP2008-11) community unit plan and City zone change (ZON2008-13) from “SF-5” Single-family Residential to “LC” Limited Commercial and County zone change (ZON2008-16) from “SF-20” Single-family Residential to “GC” General Commercial. Generally located on the southwest corner of 119th Street West and Pawnee Avenue.

BACKGROUND: The applicant proposes to create a commercial community unit plan (“CUP”) containing 33.97 acres with eight parcels. Part of the application area is located within the county while part is in the city.

The requested zone change and CUP within the unincorporated area of Sedgwick County (CUP2008-11 and ZON2008-16) consists of one parcel (Parcel 7-5.44 acres) located one-fourth mile south of the intersection of Pawnee Avenue and 119th Street West. Proposed zoning for this parcel is GC General Commercial (“GC”). Currently the property is subject to a conditional use for a rural home occupation for a landscape contractor’s business (CON2000-58), granted for a 10-year period that expires December 21, 2010. As requested by this CUP application, the parcel could continue in use as a landscape contractor’s storage yard (construction sales and service) in the future with the same conditions as CON2000-58 except the time limit would be removed. The conditions of the CON2000-58 are incorporated as “Note A” on the CUP.

The requested zone change and CUP within the City of Wichita (CUP2008-10 and ZON2008-13) consists of Parcels 1-6 and Parcel 8. Requested zoning for Parcel 1 (1.40 acres), Parcel 2 (1.55 acres) and Parcel 3 (1.36 acres) is GO General Office (“GO”). These parcels are located south of Pawnee Avenue on the west end of the proposed development. Requested zoning for Parcels 4-6 and Parcel 8 is LC Limited Commercial (“LC”). Parcel 4 (1.59 acres) is located along Pawnee Avenue and adjoins Parcel 5 (1.45 acres) at the intersection of Pawnee Avenue and 119th Street West. Parcel 8 comprises the majority of the CUP (19.35 acres). Parcel 6 is a smaller parcel (1.86 acres) surrounded by Parcel 8 and currently is developed with a residence.

The applicant has eliminated the following uses: adult entertainment establishment, sexually oriented business, correctional placement residences, nightclub in the City, nightclub in the County and tavern or drinking establishment. Restaurants with drive-through windows, convenience stores, service stations and vehicle repair, limited, will not be permitted within 200 feet of residential uses, and drive-through lanes are to be designed to ensure queuing lanes do not align vehicle headlights facing residential zoning. No overhead doors shall be allowed within 200 feet of residential uses and shall not be facing any residential zoning district. Exterior audio systems that project sound beyond the boundaries of the CUP are prohibited.

Prior to the CON2000-58 case, a requested zone change to LI Limited Industrial (“LI”) to operate the contractor’s business (without the associated rural home occupation) was withdrawn after recommendation for denial by staff and opposition from surrounding landowners. LI zoning was viewed

as inappropriate due to its intensity and its potential to be a deterrent to future residential development in the area. Another factor was the mid-mile location of the site, which is contrary to commercial locational guidelines. The ten year time-frame anticipated the operation of a use that is more rural in character until the time when the vicinity was ripe for urban-type development.

The current request for GC for Parcel 7 would prohibit the following GC uses: manufacturing, limited and general; welding/machine shop, gas and fuel storage and sales, warehousing, wholesale or business services, printing and publishing, general, vehicle repair, limited and general, recreational vehicle campground, recycling processing center, animal care, general, kennel, hobby and boarding/ breeding/ training, monument sales, microbrewery and auditorium or stadium. GC is the first zoning district that both allows a full-scale contractor's storage yard and allows residential uses. It is recommended that these restrictions be further limited to allowing the continued use of the parcel as the landscape contractor's storage yard (including the continued occupation of the residence as a part of the conditional use requirements) or to those uses permitted in the GO district.

Maximum building coverage for the CUP and the parcels would be 30 percent; maximum gross floor area would be 35 percent of total land area, and maximum building height would be 35 feet. The number of permitted buildings would be one for Parcels 4 and 5, three for Parcel 6, four for Parcels 2-3 and five for Parcels 7 and 8.

The CUP provides wall requirements (except wood is added as a possible material), screening of trash receptacles, loading docks, outdoor storage and loading areas and roof-top equipment and exterior setbacks per the UZC. It provides architectural compatibility, shared landscape palette and consistency in parking lot elements with heights limited to 24 feet for base, pole and fixtures to enhance the planned appearance of the development. Use of wood material requires approval by the Governing Body as a deviation from the UZC CUP requirements.

Monument signage would be limited to 20 feet in height. Portable and off-site signs would be prohibited. Flashing signs (except time and temperature signs and public service messages), rotating or moving signs, signs with moving lights or signs which create illusions of movement would be prohibited; window signs would be limited to 25 percent of window area and wall signage on the rear of buildings prohibited. The CUP requires cross-lot circulation, pedestrian connectivity between the buildings and the arterial streets and internal circulation not impeding movement between parcels.

The property is in agricultural use except for the residence on Parcel 6, located on land zoned SF-5, and except for the residence associated with the rural home occupation for the landscape contractor's business on Parcel 7, located on land zoned SF-20 with CON2000-58. The property to the north is being developed with a single-family subdivision, Turkey Creek Addition, on property zoned SF-5. A nine-acre vacant tract zoned SF-20 is located at the northwest corner. A church is located on the northeast corner on property zoned SF-5, surrounded by Flat Creek Addition with single-family residences. The land to the east of 119th Street West is zoned SF-20 and in agricultural use. The property to the south also is zoned SF-20 and is in agricultural use. The remnant of CON2000-58 extends about 400 feet south of Parcel 7 to include a "future building" that has not been built. The tributary to the Calfskin Creek and its floodplain is located to the west of the CUP on property zoned SF-5 and SF-20. West of the Calfskin tributary, single-family residences are being developed in the Southwest Passage Addition.

CASE HISTORY: The property is unplatted. The portion in Sedgwick County was part of a zone change request for LI zoning that was withdrawn in 2000 (ZON2000-15) and subsequently approved as CON2000-58.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5, SF-20	Single-family residential, vacant, church
EAST:	SF-20	Agricultural
SOUTH:	SF-20	Agricultural

WEST: SF-5, SF-20 Calfskin Creek tributary, single-family residential, vacant, agricultural

PUBLIC SERVICES: 119th Street West is classified as an urban minor arterial and is paved as a two lane paved rural principal arterial, and a future project will add shoulders and improve the paving of 119th Street West between Kellogg and Pawnee Avenue. Pawnee Avenue (23rd Street South) west of 119th Street West is classified as a rural major collector and also is paved as a two lane rural road. East of 119th Street West, Pawnee Avenue is classified as an urban minor arterial and is being constructed to four-lane urban standards, including some intersection improvements. The road right-of-way is in the City of Wichita for approximately 350 feet south and west of the intersection and in Sedgwick County for the remainder of the frontage. 2007 traffic volumes (ADTs) were 4,051 vehicles per day on 119th Street West south of Pawnee Avenue and 829 vehicles per day on Pawnee Avenue west of 119th Street West. This would increase substantially with normal levels of commercial development. Calculating an average of 40 trips per day per 1,000 square feet of potential gross floor area (an amount average for a shopping center but substantially below volumes generated by high-traffic uses such as convenience stores, banks with drive-through windows or restaurants), the site could be estimated to generate up to 20,000 trips per day. This amount probably would not be realized in full due to multi-stop shopping trips and pass-by trips or development of parcels at a level below authorized gross floor area that would reduce traffic generation, still the development would radically alter the volume of traffic in the neighborhood.

Access points shown on the CUP generally follow the access management guidelines, with two full movements and two right in/right out approaches on Pawnee Avenue and three full movements and two right in/right out on 119th Street West, most of which are shared openings. It is recommended the westernmost full movement entrance on Pawnee Avenue be aligned with Upland Hills Street.

Water is available at the intersection and sewer is available from Turkey Creek Subdivision to the north of Pawnee Avenue. Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide, Map as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “urban development mix.” The property is within the “Wichita 2030 Urban Growth Area.” The CUP and proposed LC/GO zoning conforms to the future Land Use Guide Map, except with respect to the amount of commercial zoning (approximately 25 acres) is more than the 4-15 acres recognized in the land use category description of the *Comprehensive Plan* as typical of neighborhood centers associated with local commercial development at arterial intersections. The GC zoning is not in conformance.

In terms of conformance with commercial goals/objectives/strategies and locational guidelines, it partially conforms to **Commercial Goal/Objective B** of “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” It could be construed that it conforms to **Strategy III.B1** of locating local commercial development (neighborhood centers) in areas shown on the Land Use Guide at the intersection of two arterial streets and it is within the area shown for urban expansion. The CUP incorporates provisions conforming to **Strategy III.B.2** of integrating out parcels to planned centers through shared internal circulation, similar landscaping and building materials, and combined ingress/egress. **Strategy III.B.3** seeks to reduce access points along arterial streets; the recommendations conform to the Access Management Policy. **Commercial Locational Guideline #1** of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets. The proposed development complies with this guideline. **Commercial Locational Guideline #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use, and **#4** recommends compact clusters versus extended strip development. The proposed CUP restricts the height of parking lot lighting to 24 feet, restricts overhead doors and drive-through windows in proximity to residential zoning. The use of wood for the screening wall does not comply with the UZC requirements. The distance between the CUP and the adjacent subdivision is one-third mile, across a 100-year flood plain; however, the terrain is flat so the rear facades of the commercial activities still would be

visible. **Office Locational Guideline #1** states office uses should be generally adjacent to arterials, **Guideline #3** recommends incorporating local, service-oriented offices within or adjacent to neighborhood and community scale commercial development and **Guideline #4** sees low density office use as a transitional use. Parcels 1-3 are restricted to GO, and staff recommends limiting the southern portion of the CUP to GO uses. The GC request does not conform to plans and policies due to its location at a mid-mile location and the intensity of GC that is a zoning district intended for regional commercial or industrial locations. It does allow the continuation of an existing use that was developed as a rural home occupation while the surrounding property was more rural in character.

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

- A. APPROVE the zone change (ZON2008-13) to LC for Parcels 4, 5 and Parcel 8 except the south 350 feet and GO for Parcels 1, 2, 3, 6 and the south 350 feet of Parcel 8.
- B. APPROVE the zone change (ZON2008-16) to GC subject to Note A for Parcel 7:
- C. APPROVE the Community Unit Plan (DP-312), subject to the following conditions:
 1. Provide guarantees for left turn center lanes and right turn decel lanes to all full movement approaches at time of platting.
 2. Align a western drive on Pawnee Avenue with Upland Hills Street.
 3. Restrict Parcel 7 to those uses permitted in the GO zoning district and the rural home occupation as approved by CON2000-58.
 4. Restrict Parcel 6 and the southern 350 feet of Parcel 8 to GO zoning.
 5. If wood is used for the screening wall of parcels zoned LC or GC abutting residential zoning, a buffer of evergreen trees planted at a rate of one tree (with a mature height of at least 20 feet) per 20 linear feet shall be provided in conjunction with the wood fence.
 6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 8. The ordinance/resolution establishing the zone change shall not be published until the platting has been recorded with the Register of Deeds.
 9. Prior to publishing the ordinance/resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-312) includes special conditions for development on this property.
 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: The property is in agricultural use except for the residence on Parcel 6, located on land zoned SF-5, and except for the residence associated with the rural home occupation for the landscape contractor's business on Parcel 7, located on land zoned SF-20 with CON2000-58. The property to the north is being developed with a single-family subdivision, Turkey Creek Addition, on property zoned SF-5. A nine-acre vacant tract zoned SF-20 is located at the northwest corner. A church is located on the northeast corner on property zoned SF-5, surrounded by Flat Creek Addition with single-family residences. The land

to the east of 119th Street West is zoned SF-20 and in agricultural use. The property to the south also is zoned SF-20 and is in agricultural use. The remnant of CON2000-58 extends about 400 feet south of Parcel 7 to include a “future building” that has not been built. The tributary to the Calfskin Creek and its floodplain is located to the west of the CUP on property zoned SF-5 and SF-20. West of the Calfskin tributary, the single-family residences are being developed on the Southwest Passage Addition.

2. The suitability of the subject property for the uses to which it has been restricted: The current zoning, SF-5 and SF-20, is suited for development of perhaps half of the property, since the expectation is for a total of 4-15 acres for local commercial development and the remaining property for urban residential mix. The GO zoning reduces the impact from LC zoning to more in line with the amount of commercial use expected at the arterial intersection.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: GC uses are detrimental to the future desirability of the surrounding properties for residential use, particularly due to the placement of Parcel 7 in the mid-mile location. The length of requested LC zoning extending one-fourth mile south of the intersection would be detrimental to residential use in the vicinity. The recommended restrictions to GO would help mitigate these effects. Wood material for the exterior property line is not in conformance with the CUP standards of the UZC, and, due to the flat terrain, the commercial use could be visible to the adjacent residential developments. To mitigate this impact, increased evergreen buffering is recommended. The additional landscape buffering, coupled with the wide distance of the floodplain separating the commercial and residential development, would be mechanism to comply with the UZC requirement for Governing Body waiver of CUP standards, which is that the waiver meets the objectives of the Comprehensive Plan and good planning practice. Alternatively, the standard masonry wall coupled with the normal Landscape Ordinance buffer requirements would be suitable to screen the commercial and residential uses.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide, Map as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “urban development mix.” The property is within the “Wichita 2030 Urban Growth Area.” The CUP and proposed LC/GO zoning conforms to the future Land Use Guide Map, except with respect to the amount of commercial zoning (approximately 25 acres) is more than the 4-15 acres recognized in the land use category description of the *Comprehensive Plan* as typical of neighborhood centers associated with local commercial development at arterial intersections. The GC zoning is not in conformance. In terms of conformance with commercial goals/objectives/strategies and locational guidelines, it partially conforms to **Commercial Goal/Objective B** of “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” It could be construed that it conforms to **Strategy III.B1** of locating local commercial development (neighborhood centers) in areas shown on the Land Use Guide at the intersection of two arterial streets and it is within the area shown for urban expansion. The CUP incorporates provisions conforming to **Strategy III.B.2** of integrate out parcels to planned centers through shared internal circulation, similar landscaping and building materials, and combined ingress/egress. **Strategy III.B.3** seeks to reduce access points along arterial streets; the recommendations conform to the Access Management Policy. **Commercial Locational Guideline #1** of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets. The proposed development complies with this guideline. **Commercial Locational Guideline #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use, and **#4** recommends compact clusters versus extended strip development. The proposed CUP restricts the height of parking lot lighting to 24 feet, restricts overhead doors and drive-through windows in proximity to residential zoning. The use of wood for the screening wall does not comply with the UZC requirements. The

distance between the CUP and the adjacent subdivision is one-third mile, across a 100-year flood plain; however, the terrain is flat so the rear facades of the commercial activities still would be visible. **Office Locational Guideline #1** states office uses should be generally adjacent to arterials, **Guideline #3** recommends incorporating local, service-oriented offices within or adjacent to neighborhood and community scale commercial development and **Guideline #4** sees low density office use as a transitional use. Parcels 1-3 are restricted to GO, and staff recommends limiting the southern portion of the CUP to GO uses. The GC request does not conform to plans and policies due to its location at a mid-mile location and the intensity of GC that is a zoning district intended for regional commercial or industrial locations. It does allow the continuation of an existing use that was developed as a rural home occupation while the surrounding property was more rural in character.

5. Impact of the proposed development on community facilities: The development will add traffic to the arterial streets, which will be mitigated somewhat by shared access drives and by additional left-turn center lanes and right-turn decel lanes. Street improvements underway on Pawnee Avenue east of 119th Street West and planned for 119th Street South between Kellogg and Pawnee Avenue will help alleviate traffic impacts to the north and east. Other municipal services are available.

DONNA GOLTRY, Planning Staff presented the staff report.

MCKAY clarified previous conditional use approval conditions.

TERRY SMYTHE, RUGGLES & BOHM, AGENT FOR THE PROPERTY OWNERS, passed a "Hand Out" to MAPC members. He said they have spent considerable time with staff to come up with a compromise on this application. He said they originally applied for "GC" General Commercial zoning so that the individual to the south could continue his operation. He said in order to keep the business and home site; "GC" zoning was needed. He said they eliminated a lot of uses allowed under "GC" in an attempt to "step down" the zoning to make it more compatible in this general area. He said he would like several questions clarified and said they were willing to accept certain conditions. He said they have had several discussions about compatibility with similar uses in different areas of the City that are currently occurring that have very little or no impact on the areas. He briefly reviewed a number of locations and gave examples where restricted "GC" zoning use does not affect development of single family homes around it. He commented that there was a major flood plain to the west of the area and that the individual on the south owns everything to the south. He said the area to the south may be developed with single family homes in the future. He said they don't think they have a huge compatibility problem if the development is done properly. He referred to the "Hand Out" which reflected the size and length along frontage of several developments in Wichita. He said their request was pretty much standard for neighborhood shopping centers. He said he believed the Comprehensive Plan, which allowed between 4-15 acres for such developments, needed to be updated. Referring to the list, he said it looks like the recommended standard was either ignored or revised for most of the areas listed; however, he said most reflected the typical size of shopping centers now a days. He said they have approximately 34 acres overall and said east 119th Street is a prime area for commercial uses. In summary, he said the applicant has given up uses in "GC" zoning and that they would meet all requirements and conditions listed in the CUP, including but not limited to landscaping, compatibility setbacks, lighting standards, etc. In addition, he said there are City and County Codes in place with regard to nuisances and noise. He said they would welcome any input on a better way to handle the situation and concluded by stating that he and has worked very hard with staff on the application.

There was brief discussion concerning the location of the closest large commercial development.

MCKAY commented that 119th Street is a major street going north and south.

TAPE 2, SIDE 1

MARK BIBERSTEIN, ATTORNEY AT FOULSTON AND SEIFKEN, LLP, 1551 NORTH WATERFRONT PARKWAY, said he was representing the Jacobs family and provided MAPC members a “Hand Out” dated April 10, 2008. He said they are not in agreement with the development of Parcel #7 and stated he had appeared before this commission in 2000 regarding this property. He said at that time, staff recommended against “LI” or “GC” zoning. He said Parcel #7 is low density residential and that the application is inappropriately mixing land uses. He referred MAPC members to the May 25, 2000, Staff Report for ZON2000-00015 and the MAPC minutes from that hearing. He said the argument staff made to deny the request in 2000 is the same argument he and his clients are making now.

MOTION: To approve an additional five minutes time.

VAN FLEET moved, **SHERMAN** seconded the motion, and it carried (12-0).

BIBERSTEIN referred MAPC members to the June 23, 2000 memo from Donna Goltry handed out at that MAPC Hearing. He said the conditional use and revised site plan submitted by the applicant included fencing and trees along 119th Street. He said the applicant has never done any of those things. He commented that apparently Mr. Girrens business has grown from a landscape/contracting business into an excavation business complete with heavy equipment storage. He said use as a heavy equipment storage yard is incompatible for a residential area. He referenced Page 2 of the staff report and commented that the conditional use time limit would be removed. He said this land is identified for residential use and that commercial uses will radically increase traffic along 119th Street.

MOTION: To approve an additional five minutes time.

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

BIBERSTEIN said use of the area as a heavy equipment maintenance yard is a problem. He said with the current conditional use, the applicant will need to submit another conditional use application in 3 years. He suggested letting that happen, and at that point re-evaluate the situation. He mentioned that the City rezoning the area to Mr. Girrens’ request will make his land very valuable and he will be able develop the land to sell in the future for residential expansion; however, some uses are no longer suitable with residential zoning. He suggested Mr. Girrens move the storage to a more suitable location.

LOUIS SITTLER, 24912 WEST 6th STREET, SOUTH, GARDEN PLAIN, KS 67050 said **LORRAINE SITTLER** owns an 80-acre tract east of 119th Street across from the area of the requested zoning change. He said changing from single-family residential to a less restrictive use would have a detrimental impact on the value of this 80-acre tract for housing development. In addition, he said this will likely establish a precedent. He commented briefly on the City negotiating an easement for an interceptor sewer along the north property line. He said “GC” zoning would be out character with single-family zoning. He concluded by saying they would prefer that the zoning be left as single family. He said “GO” zoning with safe guards would be a second choice.

SMYTHE said he stands by the CUP submitted. He said this area is becoming an urban residential area with uses that are compatible with that type of “build out” and commercial shopping center. He said the south piece has always been discussed as being out of place. He referred to the “hand out” and commented that these are developments with similar uses adjacent to single family homes and they can tell that these are compatible with those uses because there has been no drop in property values and people are not flocking away from these areas. He said Mr. Girrens business it is a large maintenance facility with a back hoe and low boy; however, business is conducted off site which causes less impact on traffic in the area. He said he has spoken with Mr. Sittler concerning his perceived loss of property value, and mentioned properties adjacent to the Lake Point and Waterfront developments which are zoned “LI” and how people are building houses to the east of those developments. He asked if there were any other ways to solve Mr. Girrens’ issue. He said County Code Enforcement can verify if Mr. Girrens is in

compliance with the CUP. He concluded by saying that to his knowledge, Mr. Girrens has never had a citation for non-compliance.

Responding to a question from **GISICK** concerning the current conditional use site plan and why there was no follow through to insure the trees were planted and the fence constructed, **SMYTHE** commented that he didn't represent the applicant at the first MAPC hearing in 2000, but that Mr. Girrens has had no citations for being in violation of the site plan.

VAN FLEET asked about adding storage of industrial equipment on page 2 of the Staff Report, which listed various uses that were voluntarily eliminated from the zoning request.

SMYTHE comment that Mr. Girren's current operation was approved back in 2000 and that he is in compliance with that CUP. He said Mr. Girrens can continue that operation, but if he agrees not to store industrial equipment that may cause him go out of business so he was hesitant to say yes or no. **SMYTHE** asked for a definition of industrial equipment.

VAN FLEET clarified that the answer to his question was "no".

BOB PARNACOTT, COUNTY COUNSELOR, said there wasn't a defined term for industrial equipment in the Unified Zoning Code. He said current use was for contractor sales and storage with home occupation, which the applicant will be allowed to continue.

MCKAY clarified the entire CUP and zoning recommendation.

Responding to a question from **MCKAY** concerning a previous case, **MILLER** mentioned Kirk Excavation on 21st Street North, which was a similar situation because of the residential area immediately east of the site. He said on the flip side, it would be more proactive to have uses and zoning "stepped down" from "LC" to more restrictive uses as you get further away from the parcel.

MCKAY said he didn't want to put this gentleman out of business.

MILLER commented neither did staff and that is why the recommendation was to allow the use as a home occupation.

HILLMAN said there are other similar operations within the City that are inappropriate but they continue a business that is entirely incompatible in an area. He said this operation will be within a residential area within a few years, and wondered how the MAPC can limit this process.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (10-2).

HILLMAN and **VAN FLEET** – No.

SHERMAN asked for clarification that the applicant was in compliance with the current site plan.

MITCHELL commented that the agent for the applicant said he was not aware of any citations.

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- 10. Case No.: CON2008-07 – Chisholm Trail Church of Christ c/o Frank Wooden & Ivory Lifsey. City Conditional Use to permit a daycare center on property described as:**

The Northwest Quarter (NW/4) of the Northeast Quarter (NE/4) of Section 36, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas. Generally located west of Woodlawn Avenue on the south side of 37th Street North (5833 East 37th Street North).

BACKGROUND: The applicant is requesting a Conditional Use to operate a day care, general, out of their church. The unplatted tract is zoned SF-5 Single-family Residential (“SF-5”). A church is permitted by right in the SF-5 zoning district. A day care, general (Unified Zoning Code, UZC, Art II, Sec II-B, 4(a) & (b)), is an establishment that allows for the care, protection and supervision of more than 10 individuals at one time on a regular bases away from their primary residence for less than 24 hours per day. A day care, general, can be considered as a Conditional Use in the SF-5 zoning district.

The conditions for a day care, general in the in the SF-5 zoning district, per Art III, Sec III-D, 6(i) of the UZC are: (a) Day care centers shall comply with all applicable state regulations. (b) When located in the residence of the care provider in a residential zoning district, day care centers shall comply with the general home occupation standards of Sec IV-E-3; this condition does not apply to this case. (c) Outdoor play shall be limited to the hours of 7:30 AM to 6:30 PM, if located within 100 feet of a lot containing a dwelling unit; this condition does not apply to this case. (d) Provisions of parking spaces in Art IV, Sec IV-A, 4 may be provided by shared parking when the day care is located within an existing church or place of worship, however the day care shall provide convenient off-street loading facilities as required.

The applicant proposes to use the church’s 90-foot (x) 50-foot multi-purpose room with adjacent class rooms for the day care service. The proposed operation schedule is Monday-Friday, sun up to sun down, with the facility open to church members and the neighborhood. The 4.59-acre site is located in the middle of the SF-5 zoned 40-acres the church/applicant owns, with frontage/access onto 37th Street North. The applicant proposes to put up playground equipment, on either the south or east sides of the site. The proposed areas for the playground are located a minimum of approximately 460 feet from the nearest lot (east of the site) with a dwelling unit. Drop off areas are located under the canopies on the west and east sides of the church. The applicant has stated that there are approximately 150 parking spaces for the church and the proposed day care, which is sufficient, as the church will normally not use the parking during the proposed operation schedule for the day care.

Properties located north of the site, across 37th Street North, are in the City of Bel Aire. These properties are developed as a large nursery/garden center (and employee parking), single-family residential and undeveloped land. Properties (south of 37th) located east of the site are zoned SF-5 and are developed as a single-family residential subdivision. Properties located south of the site are zoned SF-5, with most of it located within Chisholm Creek Park (a public park), which abuts K-96 on its south side. Properties located west of the site include an SF-5 zoned church and LI Limited Industrial (“LI”) zoned, partially developed industrial/office/warehouse subdivisions. The active Union Pacific Railroad track marks the end of this area of industrial zoning and development

CASE HISTORY: The subject site is part of the applicant’s unplatted 40-acres of SF-5 zoned property.

ADJACENT ZONING AND LAND USE:

NORTH:	City of Bel Aire	Nursery/garden center, parking, single-family residences, retail, office, warehouse, undeveloped
EAST:	SF-5	Undeveloped, single-family residences
SOUTH:	SF-5	Undeveloped, City Park
WEST:	SF-5, LI	Undeveloped, church, office/warehouse/industrial

PUBLIC SERVICES: The subject property has access to 37th Street North, a paved, 2-lane minor arterial. The 2030 Transportation Plan shows 37th becoming a 4-lane arterial. Traffic counts daily along this portion of 37th (1/3-mile west of the Woodlawn Boulevard intersection) are 11,654 – 14,498 trips per day. All services are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Major Institutional.” This category includes institutional facilities of significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospitals, and medical treatment facilities. The policies of the UZC allow consideration of day care general as a Conditional Use in the SF-5 zoning district, with application of the standards of Art III, Sec III, 6(i), Art IV, Sec IV-E, 3 and Art IV, Sec IV-E, 4. Application of these standards on a site can limit the size of a day center in the SF-5 zoning district or deny it. The Conditional Use request for a day care, general, in the church is in conformance with the Functional Land use Guide and the standards of the UZC.

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

1. All applicable requirements of Art III, Sec III-D,6(i) of the Unified Zoning Code shall be met.
2. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
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 Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is split between the City of Wichita on the south side of 37th Street North and the city of Bel Aire on the north side of 37th. Development in the Bel Aire area consist of a large nursery/garden center (Tree Top), some single-family residences, undeveloped property and, further east of the site, a mix of retail, office and warehouse around the Woodlawn Boulevard – 37th intersection. The area in Wichita is zoned SF-5 and LI. The SF-5 zoned area is developed as single-family residential subdivisions, two churches (including the subject site), and a public park, Chisholm Creek, which features a large lake. All of the unplatted, undeveloped SF-5 zoned land in this area is owned by the applicant. West of the site, a partially developed warehouse/office/manufacturing LI zoned area ends against the active Union Pacific Railroad track. The Railroad tracks, the city limits of Bel Aire and K-96 (abutting the south side of Chisholm Park) make this a somewhat compact neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The application area is zoned SF-5 and is currently developed as a church (permitted by right in SF-5 zoning), which is where the proposed day care will be located. The UZC permits the operation of a day care, general, within a church with the approval of a Conditional Use. The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Major Institutional,” which includes such uses as a church or schools. The 4.6-acre subject site is the only developed portion of the applicant’s 40-acres. The location of the subject site within the applicant’s total 40-acres means there is at least 460 feet between it and the nearest lot with a residence on it. Direct access onto 37th keeps all traffic to and from the proposed site out of the nearby residential neighborhoods.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental

affects on residential properties in the area should be minimized by the conditions of the Conditional Use. Future development of the rest of the applicant’s 40-acres will have to take in consideration the existing day care, if the Conditional Use is approved.

- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Major Institutional.” This category includes institutional facilities of significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospitals, and medical treatment facilities. The policies of the UZC allow consideration of day care, general, as a Conditional Use in the SF-5 zoning district, with application of the standards of Art III, Sec III, 6(i). The Conditional Use request for a day care, general, in the church is in conformance with the Functional Land Use Guide and the standards of the UZC.
- 5. Impact of the proposed development on community facilities: There will be some traffic increase onto 37th Street North, to and from the site on Mondays – Fridays, from sun up to sun down.

MOTION: To approve subject to staff recommendation.

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

- 11. Case No.: CON2008-09 - Linn Blankinship (Owner/ Applicant); Brian Renollet (Agent)
Request City Conditional Use to permit accessory apartment on property zoned "SF-5" Single-family Residential on property described as:

Lots 1, 2, 3 and 4, Blankinship Addition, Wichita, Sedgwick County, Kansas. Generally located 1820 West MacArthur (east of Meridian, north of MacArthur).

BACKGROUND: The applicant seeks a Conditional Use to permit an “accessory apartment” at 1820 West MacArthur Road, a platted lot containing approximately 0.85 acres. The site is developed with a residence with an attached guestroom/accessory apartment, served by the City of Wichita water and sewer services. The applicant was recently made aware of his non-conforming status by having an accessory apartment without a conditional use permit. The owner wants to bring the property up to conformance for the possible sale of the subject site. The accessory apartment is connected to the same water and sewer service as the principal structure. The accessory structure is attached to the west side of the principal structure. The principal structure is approximately 3,000 square feet in size, and complies with applicable setbacks. See the attached site plan for more details.

The application area is located in southwestern Wichita, approximately a half mile east of the intersection of West MacArthur and South Meridian. The zoning north of the subject site is SF-5 and is currently not developed but utilized for agricultural land. To the south, the property is zoned SF-5 and is developed with a tavern\bar\disco, which has been in existence since around 1950. Zoning to the east is SF-5 and developed as a single-family residence, built around 1950. The property to the west is zoned both “GO, General Office and “LC”, Limited Commercial and is developed with a mobile home park and church. The mobile home park started development in 1985, while the church was constructed in 1963.

CASE HISTORY: The site is platted as the Blankinship Addition recorded on October 23, 1968. The structure currently on the site was constructed in 1950.

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-5” Single-family Residential	Ag Land
SOUTH:	“SF-5” Single-family Residential	Tavern, Bar, Disco

EAST:	“SF-5” Single-family Residential	Residence
WEST:	“LC” Limited Commercial	Church, Mobile Home Park
	“GO” General Office	Church

PUBLIC SERVICES: The property is located on West MacArthur Road, a two-lane, minor arterial, section line road, with 11,307 average daily trips near the subject site. The property utilizes an existing water and sewer service.

CONFORMANCE TO PLANS/POLICIES: The *Wichita-Sedgwick County Unified Zoning Code* Section III-D.6.a states that accessory apartments are required to be under the same ownership as the primary residence, compatible in appearance with the primary residence, and utilize the same water and sewer service as the primary residence.

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

1. The applicants shall obtain all applicable permits including, but not limited to: building, health and zoning.
2. Development and maintenance of the site shall be in conformance with the approved site plan and Unified Zoning Code Standards.
3. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The application area is located in southwestern Wichita, approximately a half mile east of the intersection of West MacArthur and South Meridian. The zoning north of the subject site is SF-5 and is currently not developed but utilized for agricultural land. To the south, the property is zoned SF-5 and is developed with a tavern\bar\disco, which has been in existence since around 1950. Zoning to the east is SF-5 and developed as a single-family residence, built around 1950. The property to the west is zoned both “GO, General Office and “LC”, Limited Commercial and is developed with a mobile home park and church. The mobile home park started development in 1985, while the church was constructed in 1963
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-5, which primarily permits residential uses. The site could continue to be used without the Conditional Use with just the single-family residence without the accessory apartment.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Provided that the existing accessory apartment meets all applicable codes, the accessory use should have little to no affect on the surrounding properties.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The *Wichita-Sedgwick County Unified Zoning Code* Section III-D.6.a states that accessory apartments are required to be under the same ownership as the primary residence, compatible in appearance with the primary residence, and utilize the same water and sewer service as the primary residence.

- 5. Impact of the proposed development on community facilities: Since the house and apartment have been in existence for the past 40-years, approval will not impact community facilities to any significant degree.

MOTION: To approve subject to staff recommendation.

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

- 12. **Case No.: CON2008-10** – Perry Duncan (Owners/Applicants); Max Christensen (Agent) request a county Conditional Use to permit accessory apartment on property described as:

Beginning at the Southeast corner of the Northeast Quarter; thence West 523.95 feet; thence North 665.08 feet; thence East 523.95 feet; thence South 665.21 feet to beginning, Section 29, Township 28, Range 2 East of the 6th P.M., Sedgwick County, Kansas. Generally located at 5901 South Webb Road (south of 55th Street South, west of Webb Road).

BACKGROUND: The applicant seeks a Conditional Use to permit an “accessory apartment” at 5901 South Webb Road, an unplatted lot containing 8 acres. The site is developed with a residence served by lagoon and both well and rural water. The applicant proposes to install an accessory apartment in a portion of a bigger building which will be detached from the principal structure, which will be tied into the same water and septic system as the primary structure. The accessory structure is to be located approximately 120 feet south and east of the principal structure, which is approximately 2,900 square feet in size, and complies with applicable setbacks. See the attached site plan for more details.

The application area is located southeast of the city, in the county, approximately four miles west of the Sedgwick County / Butler County line and less than a mile east of the Derby city limits. The site is surrounded by large lot residential/agricultural uses. All adjoining property is zoned “RR” Rural Residential.

CASE HISTORY: The site’s current zoning was probably granted in 1985 with the adoption of countywide zoning.

ADJACENT ZONING AND LAND USE:

NORTH:	“RR”	Rural Residential	Farmstead
SOUTH:	“RR”	Rural Residential	Farmstead
EAST:	“RR”	Rural Residential	Farmstead
WEST:	“RR”	Rural Residential	Farmstead

PUBLIC SERVICES: The property is located on South Webb Road, a two-lane, unimproved, section line, residential road, off of South 55th Street East, a section line road with 75 feet of right of way. The property utilizes an existing lagoon for sewage and uses well and rural water from Sedgwick County Rural Water District No. 3.

CONFORMANCE TO PLANS/POLICIES: The *Wichita-Sedgwick County Unified Zoning Code* Section III-D.6.a states that accessory apartments are required to be under the same ownership as the primary residence, compatible in appearance with the primary residence, and utilize the same water and sewer service as the primary residence. This property is located in the Small City (Derby) 2030 Urban Growth Area.

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

1. The applicants shall obtain all applicable permits including, but not limited to: building, health and zoning.
2. Development and maintenance of the site shall be in conformance with the approved site plan and Unified Zoning Code Standards.
3. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All property surrounding the application area is zoned RR and intended or developed for single-family residential use. The area is rural in character with large-lot residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR, which primarily permits agriculture and large lot residential uses. The site could continue to be used without the Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Provided that the proposed accessory apartment meets all applicable codes, the proposed accessory use should have little to no affect on the surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Wichita-Sedgwick County Unified Zoning Code* Section III-D.6.a states that accessory apartments are required to be under the same ownership as the primary residence, compatible in appearance with the primary residence, and utilize the same water and sewer service as the primary residence. This property is located in the Small City (Derby) 2030 Urban Growth Area.
5. Impact of the proposed development on community facilities: Approval will not impact community facilities to any significant degree.

DERRICK SLOCUM, Planning Staff presented the staff report.

He mentioned a correction to the Staff Report stating that currently there is no other building in existence on the property, other than the single family dwelling.

PERRY DUNCAN, 5901 SOUTH GOLD, APPLICANT said he would like to build a shop to put all his junk and tractor and trailers in. He said his daughter, who currently lives in his basement, would use the apartment at the shop until she finishes college.

KENNETH KOFTAN, 5801 SOUTH WEBB said he lives within an 1/8 of a mile of this particular property and that he is present to represent several of the land owners in the area opposing the proposed conditional use request. He said they want to protect the integrity of the neighborhood and keep it as single family dwellings. He said they do not oppose the shop, just the apartment because they would like to keep homes for single families with no possibility of renters. He said he wanted to make sure the MAPC was aware that in the USA one person does not dictate to the neighborhood what is going to happen. He said he has signed petitions from six of the ten residents that are eligible to protest the action requesting that the MAPC please

don't do this. He said that represents more than 1/2 of the people in the area. He said the MAPC needs to protect the property owners. He said it's not like this proposal is for the benefit of the community like a water line serving a group of people. He said this request is not for the benefit of the community, and indeed, it is detrimental to the community. He commented that this was not a hardship case and that the applicant has the ability to build or rent places for his children and does not have to put an apartment on the property. He related a story about an accessory apartment in a nearby neighborhood that turned into a rental unit where renters erected a pistol range. He said the probability is that people that own the property are going to take care of their property. He concluded by saying that the neighbors are extremely concerned about the possibility that someone is going to rent the property. He added that Mr. Slocum has not done his detail work because the water district by-laws prohibit using one water meter for both residences. He said they can make an application for another meter. He ended by stating that the neighbors are also concerned about traffic.

HILLMAN asked if Mr. Koftan had copies of the water district rules or petitions.

KOFTAN said he had six protest petitions with him. He said the applicant can apply for another water meter, but it should have been pointed out as something that needed to be done.

Responding to a question from **GISICK** concerning the staff report, **MILLER** said the County Commission can waive the supplemental use regulation on the water issue.

JENELLE KAFTON, 5801 SOUTH WEBB said they bought their 20 acres 20 years ago when it was just a milo field and donated 75 feet for the roadway. She said the neighbors like to get out and walk in the area. She said the neighbors feel this request is quite a compatibility problem. She mentioned that Mr. Duncan has his daughter, her husband and 4 children living with him. She also mentioned that they use their cars excessively and that as the children age, there will be more traffic with sports, and more events, plus the two trips per day for the school bus. She also mentioned that his daughter operates a photography business out of the house. She said all lots in the area are 20 acres unless you go through the platting process. She said Mr. Duncan has 8 acres and he wants two residences. She also mentioned tax increases in the valuation for their property. She concluded by stating that this was not a hardship case. She said this request may make it more convenient for the Duncan's, but not the rest of the neighborhood.

DUNCAN responded that he was unaware that his neighbors were unhappy and that he had talked to several of his neighbors directly north of him. He said he had no desire to rent the property and would be willing to comply with a rental restriction. He said the shop is going to get built either way, with or without the apartment.

TAPE 2, SIDE 2

He said he is trying to help his daughter get through school and that she uses his living room to meet with her photography clients.

Responding to a question from **FOSTER, SLOCUM** said the MAPC has the power to change the conditional use permit to limit the apartment to use by immediate family only.

MOTION: To approve subject to staff recommendation

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

SUBSTITUTE MOTION: To approve subject to staff recommendation and limit use to immediate family.

FOSTER moved, **MCKAY** seconded the motion, and it carried (10-2).
ANDERSON and **GISICK** – No.

Responding to **GISICK**, **PARNACOTT** commented that County Code Enforcement would respond to any complaints about the property.

13. Case No.: CON2008-11 – Virginia Master (Owner); Lyle Schuette (Contract Purchaser); Benchmark Land Survey (Agent) request a county Conditional Use to permit soil extraction on 30 acres on property described as:

East 990 feet of the South half of the Southeast Quarter EXCEPT South 60 feet and East 50 feet for roads, Section 16, Township 28, Range 2 East of the 6th P.M., Sedgwick County, Kansas. Generally located at 11100 east 47th Street South (northwest corner of 47th Street South and Greenwich).

BACKGROUND: The contract purchaser of the 30.4 acres located at the northwest corner of east 47th Street South and south Greenwich Road seeks a Conditional Use to allow top soil mining. The acreage is currently zoned RR Rural Residential (“RR”). Mining is permitted in the RR district with an approved Conditional Use. The site is currently developed with a large-lot single-family residence served by a lagoon, a barn and a corral located in the southeastern corner of the property. The balance of the site is a fenced grass pasture. The site is unplatted, however, the applicant’s site plan notes the existence of a “floodway reserve agreement” (film 411, page 615) that encumbers the center one-third to one-half of the site. The property is currently fenced with a pipe and four-strand wire fence. The berm shown on the proposed site plan is to be deleted.

The applicant proposes to excavate no more than one acre of top soil at a time, and the excavations will not exceed 10-inches deep. The site would be worked, east of the creek from the southeast to the northeast, and then, west of the creek from the southwest to the northwest. He indicates that he uses a tractor mounted roto-tiller to dig up the soil and then loads the material onto his one truck. He also indicates he will leave four inches of top soil as a seed bed for the grass that he plans to plant to stabilize excavated areas. No more than one acre at a time will be mined, with each acre being reseeded after excavation. The applicant states that he will not excavate more than five acres a year, and will not exceed 10 truck trips a day from the site. He may excavate less area in a given year and may have less than 10 truck trips per day. The applicant indicates that he will disc excavated areas to minimize blowing dust.

The applicant’s site plan establishes a limit of excavation line at 20 feet from the property line. The site appears to have three access points, two on Greenwich Road (250 feet and 850 feet from the intersection) and one on 47th Street South (275 feet from the intersection). The site has approximately 16 feet of fall from the lot’s southeast corner to the center of the site at the creek and about 13 feet of fall from the lot’s northwest corner to the center of the site. The Sedgwick County soils map indicates the soil on this property is classified as Irwin silty clay loam. These soils are typically found on uplands susceptible to erosion.

The applicant will be required to set aside 4.5 acres around the existing home to meet minimum area standards for homes utilizing lagoons, and to preserve the integrity of the home as a residential use separate from the soil extraction use.

Based upon the applicant's expectation of extracting between one and five acres a year, and after setting aside 4.5 acres for the home site, the lagoon and the creek bottom, it could take approximately 25 years (at one acre per year) or as few as five years (at five acres per year) to complete excavation. When excavation is completed, the site is to continue as a large-lot residence.

CASE HISTORY: The site's zoning was probably established in 1985 with the adoption of a county-wide zoning code.

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential, approved for SF-10 Single-family Residential; undeveloped farm land
SOUTH: RR Rural Residential; single-family residence
EAST: RR Rural Residential and special permit; cemetery and township shop
WEST: RR Rural Residential; single-family residence

PUBLIC SERVICES: Municipally supplied sewer and water service are not available. Both Greenwich Road and 47th Street South are paved two-lane section line roads, and are projected through 2030 as two-lane arterials. 47th Street currently has 60 feet of half-street right-of-way while Greenwich has 50 feet.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide classifies this area as located inside of Wichita's 2030 Urban Growth Area. This classification encompasses land that is presently undeveloped but has the potential to be developed by the year 2030. The Wichita/Sedgwick County Comprehensive Plan indicates that industrial uses in rural areas should be limited to those that are agriculturally oriented, dependent upon a natural resource, or part of an appropriate expansion of an existing industrial use. Sand and gravel extraction is a use dependent on a natural resource.

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

1. The Conditional Use is approved for the removal of top soil. Removal of soil shall proceed in accordance with the approved site plan.
2. The Conditional Use permit authorizing top soil removal shall be effective for 10 years from the final approval date.
3. Not more than one acre of ground may be roto-tilled and top soil removed at any one time. Once the soil had been removed from the one acre working area it must be reseeded, or some other form of erosion control acceptable to the Director of County Code Enforcement must be established, prior to beginning roto-tilling or soil removal on the next acre. A maximum of five acres of surface area may be mined in any given calendar year. The owner of the property shall be responsible for minimizing blowing dust from the site.
4. Top soil may be removed up to a depth of 10 inches however there must be four inches of topsoil remaining to permit reseeded.
5. Four and one-half acres around the existing house and lagoon shall be identified on the site plan and set aside. Mining is not allowed within the four and one-half acres surrounding the home.
6. Mining is to begin east of the creek, and proceed south to north. Once mining is complete on the east side of the creek, mining may begin on the west side of the creek, south to north.
7. A maximum of ten daily truck trips carrying mined top soil are permitted. A truck leaving and returning to the site is counted as one trip.

8. Unless adjusted or amended otherwise, a large-lot single-family residence is the end use of the site.
9. The applicant shall maintain the existing pipe and four-strand wire fence that surrounds the perimeter of the site today.
10. The following *Wichita-Sedgwick County Unified Zoning Code* Supplementary Use Regulations found in the Article III, Section III-D.6.gg shall also be followed: (7), (8), (11), (12), (13), (14), (16), (17), (18), (19), (20), (21), (22) and (23).
11. A commercial type driveway shall be installed that meets the location requirements of the access management policy.
12. In addition to other applicable enforcement remedies, if the Zoning Administrator finds that there is a violation of any of these conditions of approval, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area surrounding the application area is a mix of large-lot suburban residential, agricultural, township and institutional uses. All property surrounding the application area is zoned RR Rural Residential.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR Rural Residential, which permits primarily large-lot residential, and agricultural uses by-right. The site is also developed with a single-family home, barn, animal corrals and fenced pasture; making the site suitable for use as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the requested conditional use will introduce a use not currently found in the immediate area. An increase in truck traffic by up to 10 trips a day, soil erosion and blowing dust are possible. However, the limited scale of the proposed excavation and the proposed conditions of approval mitigate anticipated negative effects on nearby property.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The applicant indicates he has a market for this particular type of soil, which is a benefit to the general public. However there probably are other sites that have similar soils. Denial would cause the applicant to look for another site, but may preserve the current agricultural and large-lot residential character.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide classifies this area as located inside of Wichita's 2030 Urban Growth Area. This classification encompasses land that is presently undeveloped but has the potential to be developed by the year 2030. The Wichita/Sedgwick County Comprehensive Plan indicates that industrial uses in rural areas should be limited to those that are agriculturally oriented, dependent upon a natural resource, or part of an appropriate expansion of an existing industrial use. Sand and gravel extraction is a use dependent on a natural resource.
6. Impact of the proposed development on community facilities: The primary impact of the proposed use is a minimal increase in truck traffic, which can be handled by current roadways.

DOWNING asked how deep top soil was in this area.

MILLER stated that applicant may know the answer to that question because he understood that the applicant has done some boring at the site.

LYLE SCHUETTE, 15001 EAST 79TH STREET SOUTH, said he was the property purchaser and that the bore samples along Greenwich show a lot of rock and about 4" of top soil. He said he will plant brome when he is done removing top soil. He said this is a clay based top soil that will be sold to homeowners who have drainage problems. He said he will start at 47th Street and harvest roughly an acre at a time. He said he does not want to stock pile the soil, but will roto-till it and stock pile it in small increments. He said this is very specialized dirt that is good for around the foundations of homes. He said he will keep the acreage disked and seed for brome at the next available time in the summer. He said by having 1-2 acres bare at a time, that should stop any blowing.

MITCHELL expressed concern about **SCHUETTE's** plan to work right up to within 20 feet of the property line. He said that was awfully close and would make it difficult to control erosion. He asked if the applicant would consider a wider border on the north and west two sides of the parcel.

SCHUETTE said the north is hedgerow and they can't go deep because of the root system. He said as far as the rest of the site is concerned, you can hardly tell that any top soil has been removed if they take 4"-6" of soil. He said he would increase the border if that is what is required.

KEVIN KEEN, 11005 EAST 47TH STREET SOUTH said he was opposed to the conditional use request. He said he built a new house which is seven years old and that he wouldn't wish this on anyone. He said this was a disservice to the community and the area and that it was terrible soil for house foundations. In addition, he said approximately 6,000 cars per day travel by the site at 55 miles an hour. He said heavy equipment and the noise would be a disservice to the community. He commented that there was no mention of the noise in the staff write up. He said he wants to live in a rural area and mentioned that taxes went up \$27,000 on his property this year. He concluded by stating the he was opposed to this request.

SCHUETTE said the dirt is suitable for around foundations and is FHA and VA approved.

MITCHELL asked if there was a right-of-way (ROW) request or either of the two section line roads.

JIM WEBER, COUNTY CODE ENFORCEMENT said they didn't look at that, but the County will receive ROW during the platting process.

MOTION: To approve subject to staff recommendation.

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

MITCHELL asked **MARNELL** if he would amend his motion to require a 50-foot border along the north and west sides of the parcel.

MARNELL said no because this soil removal procedure was only slightly heavier than farming operations, which could legitimately operate there now. He said erosion will occur whenever the ground is bare.

There was brief discussion concerning the slope of the property and how excavation could start erosion up the hill because of the water flow.

MITCHELL said the applicant did not disagree with changing the border, if that was what the Commission required.

Responding to a question from **FOSTER** concerning distances, **SCHUETTE** referred to the map of the parcel and explained after excavating 2” of top soil on the north, they hit roots along the hedgerow. He said the drainage from the east and west goes to the creek and that there was an 8-foot difference in the elevation compared to the elevation along 47th Street South. He said the property slopes and flows into the dry creek.

FOSTER expressed concern about protecting the root systems of the trees.

GISICK commented that the applicant would not need the MAPC’s permission to remove trees, why would the MAPC add restrictions for the applicant to protect his own trees?

FOSTER thanked MAPC staff for their efforts on the training work shop.

The Metropolitan Area Planning Department informally adjourned at 4:20 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)