

**WICHITA-SEDGWICK COUNTY**  
**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**September 17, 2015**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 17, 2015 at 1:30 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Matt Goolsby; Chair; Carol Neugent, Vice Chair; John Dailey; David Dennis; Bob Dool; David Foster; Joe Johnson (In @ 1:35 p.m.); Debra Miller Stevens; M.S. Mitchell; Bill Ramsey; Lowell E. Richardson (Out Early); John Todd and Chuck Warren. Bill Ellison was absent. Staff members present were: W. David Barber, Interim Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney; and Robert Parnacott, Assistant County Counselor.

1. Approval of the July 23, 2015 Planning Commission Meeting minutes.

**MOTION:** To approve the July 23, 2015 Planning Commission minutes.

**WARREN** moved, **RAMSEY** seconded the motion, and it carried (9-0-4). **DENNIS, DOOL, JOHNSON** and **TODD** – Abstained.

**DAILEY** commented on a remark made in the minutes regarding the Zoning Areas of Influence (ZAOI) and said if the County has jurisdiction then the cities don't per K.S.A. 12-754. So the County didn't actually take anything away, State Law took the jurisdiction away from the Cities.

**NEUGENT** clarified that prior to county-wide zoning in 1985 several small cities had territorial jurisdiction; however, due to the adoption of county-wide zoning and action by the County Commission, that jurisdiction was taken away from the cities.

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**Election of Chair and Vice Chair.**

**MOTION:** To nominate Carol Neugent as Chair.

**GOOLSBY** moved, **WARREN** seconded the nomination, and it was unanimously approved (13-0).

**NEUGENT** in the chair.

**MOTION:** To nominate David Dennis as Vice Chair.

**RAMSEY** moved, **GOOLSBY** seconded the nomination, and it was unanimously approved (13-0).

**VICE CHAIR DENNIS** and **CHAIR NEUGENT** thanked Commissioner Goolsby for his service as Chair.

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## **2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. SUB2015-00019: Final Plat – SISTERS OF ST JOSEPH 7TH ADDITION**, located north of Harry, east of Hillside.

**NOTE:** This is a replat of the University Hill Addition, University Hill 2<sup>nd</sup> Addition, Sisters of St Joseph 2<sup>nd</sup> Addition, Sisters of St. Joseph 4<sup>th</sup> Addition, Sisters of St. Joseph 5th Addition and Sisters of St. Joseph 6<sup>th</sup> Addition in addition to unplatted property. The site has been approved for a zone change (PUD2015-00003) from Multi-Family Residential (B), Two-Family Residential (TF-3), General Office (GO) and General Commercial (GC) to Planned Unit Development (PUD).

### **STAFF COMMENTS:**

- A. City of Wichita Public Works and Utilities Department advises that the site is currently being served by water and sewer.
- 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 Stormwater Management has approved the drainage plan.
- D. Provisions shall be made for ownership and maintenance of the proposed reserves. A restrictive covenant shall be submitted regarding ownership and maintenance responsibilities.
- E. 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.
- F. The plat denotes one opening along Clifton, complete access control along Morris, complete access control along Bluff, one opening along Lincoln, one opening along Bluffview, one opening along Zimmerly, and complete access control along Roosevelt. Traffic Engineering has approved the access controls. City Fire Department advises that the existing opening on Zimmerly is gated and only open during business hours.
- G. City Environmental Health Division advises that any wells installed on the property for irrigation purposes will have to be properly permitted and inspected.
- H. County Surveying requests to be contacted regarding dimensions on the plat boundary.
- I. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to [tricia.robello@sedgwick.gov](mailto:tricia.robello@sedgwick.gov) and nstrahl@wichita.gov.
- J. 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.

- K. The platlor'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.
- L. 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.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 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.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater 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.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- S. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

**DENNIS** referenced the zoning hearing on this item and asked if the people interested in the replatting in terms of the location of gates, thru drives, etc. were notified of this hearing.

**MILLER** indicated those people were sent notice.

There were no public comments.

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

**GOOLSBY** moved, **RICHARDSON** seconded the motion, and it carried (13-0).

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**2-2. SUB2015-00021: Final Plat – EDGE WATER 2ND ADDITION**, located on the west side of Hoover Road, South of 45th Street North.

NOTE: This is a replat of a portion of Gilder’s Gardens Addition.

STAFF COMMENTS:

- A. City of Wichita Public Works and Utilities Department requests the applicant extend water (distribution) to serve all lots, extend sewer (lateral) to Lots 5-8 and remove the existing water meter by City of Wichita.
- 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. The platlor’s text should accurately reference the drainage and pedestrian easement.
- D. The standard language regarding vacation statutes need to reference “K.S.A. 12-512b, as amended”.
- E. City Stormwater Management has approved the drainage plan. A portion of the project site is within the effective floodplain per FEMA Panel No. 20173C0379E. The Base Flood Elevation (BFE) is approximately 1343.50. Minimum building pads shall be at elevation 1345.50. The project will be removed from the FEMA floodplain when new maps become effective in late 2016.
- F. County Surveying advises the legal description needs corrected from "Gilder's Gardens Addition" to "Gilder's Gardens", Sedgwick County, Kansas.
- G. County Surveying advises on the title block "Gilder's Gardens Addition" needs changed to "Gilder's Gardens".
- H. County Surveying advises the 30-foot utility easement along the east line of Lots 4 and 5, Block A needs located east-west.
- I. County Surveying advises the label "PC Lot 5, Gilder's Gardens" is not the PC of said Lot 5.
- J. County Surveying would like to be contacted regarding plat boundary, bearings and distances.
- K. County Surveying advises monuments will need to be set on Jackson Heights Court right-of -way.
- L. The Owner's certificate should reference “Lots, Block, Street and Reserve”.

- M. The Applicant shall guarantee the paving of the proposed street, which includes the sidewalk.
- N. Provisions shall be made for ownership and maintenance of the proposed reserves. A restrictive covenant shall be submitted regarding ownership and maintenance responsibilities.
- O. 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.
- P. GIS has approved the plat's street names.
- Q. The dedicated right-of-way which coincides with the west property lines of Lots 1 and 8 should be denoted with a bold line. A bold line is not needed for the current right-of-way. A bold line is also needed for the Jackson Heights Cir right-of-way and the solid vertical line adjoining "58.00" deleted.
- R. "Wichita, Sedgwick County, Kansas" should be referenced in the plat title.
- S. The Applicant has platted a 20-foot building setback along Jackson Heights Ct which represents an adjustment of the Zoning Code standard of 25 feet for the Single-Family District (SF-5). The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- T. 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.
- U. City Environmental Health Division advises that any wells installed on the property for irrigation purposes will have to be properly permitted and inspected.
- V. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to [tricia.robello@sedgwick.gov](mailto:tricia.robello@sedgwick.gov) and nstrahl@wichita.gov.
- 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. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.

- Z. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 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 acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater 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. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
  
- DD. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

There were no public comments.

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

**RICHARDSON** moved, **GOOLSBY** seconded the motion, and it carried (13-0).

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**3. PUBLIC HEARING – VACATION ITEMS**

- 3-1. **VAC2015-00033: City request to vacate a platted interior side yard setback on property**, generally located east of Grove Avenue on the southwest corner of 21st Street North and Erie Avenue.

**APPLICANT/AGENT:** Center for Health & Wellness Inc., c/o Teresa Lovelady (owner) Savoy Company, P.A, c/o Mark Savoy (agent)

**LEGAL DESCRIPTION:** Generally described as the platted 5-foot interior side yard setback located on the west 5 feet of Lot 1, Block 1, Center for Health & Wellness Addition, Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located east of Grove Avenue on the southwest corner of 21st Street North and Erie Avenue (WCC #1)

**REASON FOR REQUEST:** Expansion of facility

**CURRENT ZONING:**

Subject property is zoned GO General Office. Abutting west property is zoned LC Limited Commercial. Abutting south properties are zoned TF-3 Two-Family Residential and NR Neighborhood Retail. Adjacent east properties are zoned TF-3. Adjacent north properties are zoned LC, GO, NR and SF-5 Single-Family Residential.

The applicant proposes to vacate the platted 5-foot interior side yard setback located on the west 5 feet of Lot 1, Block 1, Center for Health & Wellness Addition. The subject lot is zoned GO General Office. The Unified Zoning Code's (UZC) minimum interior side yard setback standard for the GO zoning district is zero feet, but if an interior side yard setback is provided it shall be at least five feet in width. If the setback were not platted the applicant could have applied for an Administrative Adjustment that would have reduced the GO zoning district's 5-foot interior side yard setback to zero. The applicant's request does not exceed what is permitted by an Administrative Adjustment. There are no platted easements in the described portion of the platted side yard setback. There appears to be no public utilities within the described portion of the platted side yard setback. Westar has equipment in the northwest corner of this lot near the area they are requesting to vacate. Becky Thompson is the Construction Services Area Representative and is working with the applicant on this project. She can be reached at 316/261-6320. The Center for Health & Wellness Addition was recorded with the Register of Deeds April 10, 1998.

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

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time August 27, 2015, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by vacating the described platted interior side yard setback and that the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacate the platted 5-foot interior side yard setback located on the west 5 feet of Lot 1, Block 1, Center for Health & Wellness Addition. The new interior side yard setback will be zero.

- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide any needed easements prior to the case going to Council for final action. Westar has equipment in the northwest corner of this lot near the area they are requesting to vacate. Becky Thompson is the Construction Services Area Representative and is working with the applicant on this project.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

### **SUBDIVISION COMMITTEE'S RECOMMENDED ACTION**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the platted 5-foot interior side yard setback located on the west 5 feet of Lot 1, Block 1, Center for Health & Wellness Addition. The new interior side yard setback will be zero.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide any needed easements prior to the case going to Council for final action. Westar has equipment in the northwest corner of this lot near the area they are requesting to vacate. Becky Thompson is the Construction Services Area Representative and is working with the applicant on this project.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

There were no public comments.

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

**JOHNSON** moved, **DENNIS** seconded the motion, and it carried (13-0).

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**3-2. VAC2015-00034: City request to vacate a portion of platted Morris Street right-of-way, located north of Lincoln Street between Santa Fe Avenue and rail road right-of-way.**

**APPLICANT/AGENT:** Wichita Material Recovery LLC, c/o Jennifer Jones, AT & SF Railway Company, W Winter Enterprises, LLC, c/o Wayne Winter Jr.  
(applicants)

**LEGAL DESCRIPTION:** Generally described as vacating the platted 70-foot wide Morris Street public right-of-way abutting Reserve B, a platted 16-foot wide alley and Lot 36, all in the Elliott Addition, on the north side, Santa Fe Avenue on the west side, Lots 37 & 38, and an alley, all in the Elliott Addition, and railroad right-of-way on its east side, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located north of Lincoln Street between Santa Fe Avenue and rail road right-of-way (WCC III)

**REASON FOR REQUEST:** Control traffic and dumping in the area

**CURRENT ZONING:** The subject site is platted alley right-of-way. All abutting and adjacent properties are zoned LI Limited Industrial.

The applicant is requesting the vacation of the portion of the gravel, platted 70-foot wide Morris Street public right-of-way that abuts: Reserve B, a platted 16-foot wide alley and Lot 36, all in the Elliott Addition, on the north side of Morris Street; Santa Fe Avenue on the west side of Morris Street; Lots 37 & 38, and an alley\*, all in the Elliott Addition, on the south side of Morris Street, and; railroad right-of-way on the east side of Morris Street. Morris Street does not cross the east abutting railroad right-of-way. Westar has power poles located in this portion of Morris Street. There appears to be no public utilities locate in this portion of Morris Street. LaDonna Vanderford is the Construction Services Area Representative and can be reached at 316/261-6490. No property will be denied access to public street right-of-way if the vacation is approved. If approved the vacation could create a dead end alley on the north side of Morris Street and a dead end alley\* on the south side of Morris Street. The owners of the properties on the north side of Morris Street own all of the properties abutting the east and west side of the platted 16-foot alley that could dead end at Morris Street. This alley currently merges with rail road right-of-way on its north end. All of the abutting property owners have signed the application/petition to vacate the public street right-of-way. The Elliott Addition was recorded with the Register of Deeds February 1, 1887.

\*NOTE: VAC2015-00022 was an approved petition to vacate the platted alley abutting the south side of Morris Street, however VAC2015-00022 has not been completed, thus the abutting south alley remains public right-of-way.

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

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, of notice of this vacation proceeding one time August 27, 2015, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by vacating the described platted street right-of-way and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Dedicate the north 20 feet of Morris Street as a utility-access easement by separate instrument (with original signatures) prior to the case going to City Council for final action and subsequent recording with the Vacation Order at the Register of Deeds.
- (2) Dedicate an easement for Westar equipment as a utility easement by separate instrument (with original signatures) prior to the case going to City Council for final action and subsequent recording with the Vacation Order at the Register of Deeds.
- (3) Provide restrictive covenants (with original signatures) binding and tying the vacated described Morris Street right-of-way to the abutting properties. These will go with the Vacation Order to City Council for final action and subsequent recording with the Register of Deeds and the Appraiser's Office.
- (4) Provide a legal description of the vacated street right-of-way, on a Word document, via E-Mail, to Planning, prior to the case going to City Council for final action and subsequent recording with the Register of Deeds.
- (5) VAC2015-34 will not proceed to City Council for final action until VAC2015-00022 has been to City Council for final action and subsequent recording with the Sedgwick County Register of Deeds.
- (6) All improvements shall be according to City Standards and at the applicant's expense. If needed, provide required guarantees or approved projects to ensure relocation and/or relocation of utilities, including, but not limited to, sewer lines and manholes, stormwater equipment, all and franchise utilities. All provided prior to the vacation case going to City Council for final action.
- (7) Any relocation or reconstruction of utilities, including Westar equipment, made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.

- (8) 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) Dedicate the north 20 feet of Morris Street as a utility-access easement by separate instrument (with original signatures) prior to the case going to City Council for final action and subsequent recording with the Vacation Order at the Register of Deeds.
- (2) Dedicate an easement for Westar equipment as a utility easement by separate instrument (with original signatures) prior to the case going to City Council for final action and subsequent recording with the Vacation Order at the Register of Deeds.
- (3) Provide restrictive covenants (with original signatures) binding and tying the vacated described Morris Street right-of-way to the abutting properties. These will go with the Vacation Order to City Council for final action and subsequent recording with the Register of Deeds and the Appraiser's Office.
- (4) Provide a legal description of the vacated street right-of-way, on a Word document, via E-Mail, to Planning, prior to the case going to City Council for final action and subsequent recording with the Register of Deeds.
- (5) VAC2015-34 will not proceed to City Council for final action until VAC2015-00022 has been to City Council for final action and subsequent recording with the Sedgwick County Register of Deeds.
- (6) All improvements shall be according to City Standards and at the applicant's expense. If needed, provide required guarantees or approved projects to ensure relocation and/or relocation of utilities, including, but not limited to, sewer lines and manholes, stormwater equipment, all and franchise utilities. All provided prior to the vacation case going to City Council for final action.
- (7) Any relocation or reconstruction of utilities, including Westar equipment, made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (8) 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.

There were no public comments.

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

**JOHNSON** moved, **DENNIS** seconded the motion, and it carried (13-0).

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**PUBLIC HEARINGS**

4. **Case No.: CON2015-00015 (Referred back from City Council)** - Armando Michel (applicant/owner) and Ted Knopp (agent) request a City Conditional Use request for a nightclub on LI Limited Industrial zoned property described as:

2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 32, 34 and 36, on Cleveland Avenue, Corwin's Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** (NOTE: *text in italics indicates updated information made at or after July 9, 2015, MAPC meeting*)

The applicant proposes a nightclub in the city and an as needed event center for weddings, anniversaries, graduations, company celebrations, art shows, concerts and similar events on the LI Limited Industrial zoned site; see Exhibit B. These events could have the serving of food and cereal malt beverage or alcoholic liquor. The possibility of the on-site serving and consumption of cereal malt beverage or alcoholic liquor and music and dancing defines the request as a nightclub in the city. Nightclubs are a permitted use in the LI zoning district. However, if a nightclub is located within 300 feet of a church or place of worship, public park, public or parochial school or residential zoning district the Unified Zoning Code (UZC) requires consideration of a Conditional Use. A LI zoned church abuts the northwest side of the site and B Multi-Family Residential zoned single-family residences are located 65 feet east of the site, across Cleveland Avenue, thus the Conditional Use request. Approval of a nightclub would allow the applicant unlimited liquor sales. Approval of a night club would appear to allow the first conforming nightclub along this section of Central Avenue, as defined by Hydraulic Avenue on the east side to the raised railroad tracks and Santa Fe Avenue on the west side.

The one-acre plus site is located on the north side of Central Avenue and on the west side of Cleveland Avenue. The character of the surrounding area is a mixture of GC General Commercial and LI zoned small commercial uses located along Central Avenue, with LI and GC zoned limited industrial uses located behind the commercial. LI zoning is the dominant zoning in the area. Development in the area includes, but is not limited to, a used car sales lot, offices, office-warehouses, small restaurants, auto repair, auto paint and body, a bike seller, etc. A LI zoned steel products facility and storage yard is located north and northwest of the site, across Elm Street, and is the largest development in the area. Older (built 1910-1920) B, GC and LI zoned wood frame single-family residences are also located behind the commercial development along Central Avenue and to the west, east and north of the site. The residences in this area show significant decline. There are also vacant lots and vacant buildings located in the area. A cluster of B zoned brick duplexes (built 1940) are located a half-block south of the site. Three blocks west of the site, on the southeast side of Central and Pennsylvania Avenues, is the B and GC zoned Washington Elementary School, which has had significant recent, 2003, building addition and improvements.

The applicant's site plan shows 103 parking spaces. An on-site inspection found paved parking of maybe 24 spaces. The rest of the proposed parking area is vacant except for markers separating the applicant's proposed parking from another property owner's vacant property, which splits/separates the applicant's proposed parking. The UZC requires all parking areas, loading areas and driveways on all developments other than low-density residential developments to be surfaced with concrete, asphaltic concrete, asphalt or other comparable surfacing and shall be maintained in good condition and free of all weeds, dust, trash and other debris; a variance is required to waive this standard. The applicant does not give an occupancy limit for the proposed night club nor does the site plan give the size of the proposed nightclub. The UZC requires one parking space per two occupants for a nightclub; as presented the determination of required parking cannot be made at this time. The applicant owns several other buildings located on the east side of the proposed nightclub. These businesses or future businesses will need to share the parking that the applicant is proposing, which further complicates the determination of the final parking requirement.

**CASE HISTORY:** The Conditional Use application area, Lots 2-26 (even), and Lots 32, 34 and 36, all on Cleveland Avenue, Corwins Addition, was recorded with the Register of Deeds on April 29, 1886. The proposed nightclub building was built in 1955. CON2004-00042 was a Conditional Use request to allow a nightclub within 200 feet (the standard at the time) of a residential zoning. Planning recommended denial of the request and the MAPC denied the request at the January 27, 2005 meeting. At the time of the CON2004-00042 request, the application area was permitted for a dance hall/cabaret, but could not sell or serve alcohol. The current UZC (July 9, 2009) does not define a dance hall or cabaret.

Staff has received calls protesting the use. The applicant has provided a list of 16 businesses/individuals that support the applicant's 'Request to support improvements on 1320 E Central' form letter; Exhibit A. 14 of those supporters are not listed on the ownership/notification list of those property owners located within 350 feet of the subject property. *Two of the former supporters, both located within the 20-foot protest area have withdrawn their support and have turned in valid protest.*

At the July 6, 2015, DAB I meeting both protestors and supporters spoke. Concerns of the neighborhood included: a lack of adequate parking; increased traffic in the residential area; speeding; unattended children; loud noise; trash, drunk individuals wandering the neighborhood; bad experience with other neighborhood nightclubs including two homicides, and; pedestrians being struck by vehicles at this location.

Also noted was that even if this owner has good intentions, he could sell to anyone at any time and the Conditional Use would still be valid. In an attempt to address the concerns of the residential neighbors the DAB asked the applicant to consider limits on the availability of the facility, including time limits such as closing at midnight. The applicant declined any restrictions on hours of operations.

*The following, under **CASE HISTORY**, reflects the recommendation by the MAPC at their July 9, 2015, meeting and new/updated information for the MAPC to consider.*

*At the July 9, 2015, MAPC meeting the MAPC got the applicant to agree to the additional conditions of restrictions on the nightclub's hours of operation and a condition to further minimize noise from the nightclub:*

- *The nightclub shall close at 11:00 P.M., Sunday-Thursday. The nightclub shall stop selling and serving cereal malt beverage and alcoholic liquor at 12:00 A.M. and close at 12:30 A.M., Friday and Saturday.*
- *The nightclub's door located nearest to residential development shall be marked and used as an emergency exit and shall remained closed, except for emergencies, at all times with the intent being to minimize the intrusion of noise, including music, on those residences located closest to the night club.*

*The MAPC approved, 11-2, the request per staff's conditions and the above additional conditions; see **RECOMMENDATION**, pages 5 and 6 of this report. There were protesters as well as supporters of the request at the MAPC meeting.*

*At the August 11, 2015, City Council meeting the Council voted 4-3 to return the request back to the MAPC for reconsideration. Council members voting to return the request noted that they were struggling with approving it and not approving it without the applicant knowing the seriousness of the concerns of the MAPC and neighbors. Council members voting to deny it noted that DAB I has recommended denial and that the applicant had been unwilling to address the concerns of the area's residences at the DAB meeting, but did so only at the recommendation by the MAPC. Those concerns are shown in the attached minutes from the August 11, 2015, City Council meeting. Valid protests to the request have been received that total 25.70 per cent of the of the land area located within 200 feet of the perimeter of the application area and appeals against the request from outside 200 feet.*

*On August 20, 2015, 10:43 AM, Planning Staff E-Mailed the following to the agent, Ted Knopp:  
Mr Knopp*

*We have CON2015-15 scheduled for the September 17, 2015, MAPC meeting...if you have any revisions to the request (including site plans, days and hours of operation for the event center/night club, etc) I will need them by Friday September 4, 2015...the letters going out for the September 17, 2015 MAPC meeting will be going out Friday August 21, 2015, or Monday, August 24, 2015...*

*On August 20, 2015, 10:54 AM, Mr Knopp replied:  
Thank you.*

*As of 9 AM, Thursday, September 10, 2015, MAPD staff has received no other communication or information from the applicant or the agent, thus staff has no new information to provide to the MAPC for your review and reconsideration of the case, with the exceptions as noted. MAPD staff has received complaints that the site has had activities occurring on it; MAPD has forwarded these complaints to the Code Compliance division of the Metropolitan Area Building and Construction Department.*

**ADJACENT ZONING AND LAND USE:**

|        |           |  |
|--------|-----------|--|
| NORTH: | LI, GC, B | Steel products facility and storage, vacant land, single-family residences, vacant residences  |
| SOUTH: | LI, GC, B | Vacant building, small restaurants, auto repair, auto body and paint, small offices, office-warehouse, small retail, duplexes, public school |
| EAST:  | B, GC, LC | Single-family residences, vacant land and buildings, church, vehicle sales, small offices, small retail                                      |
| WEST:  | LI        | Office-warehouse, single-family residences, church, vacant land  |

**PUBLIC SERVICES:** The subject property fronts Central Avenue, which is a five-lane arterial street with an 80-foot right-of-way at this location. Cleveland and Mathewson Avenues are local streets with a 60-foot right-of-way. The 2030 Transportation Plan designates that Central will remain a five-lane arterial. The subject property has all other public utilities.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Map of the Comprehensive Plan” identifies the portion of the site where the building is located as appropriate for “local commercial” development and most of the parking area as appropriate for “employment/industrial” development. Local commercial development does not have a significant regional draw that generates a high volume traffic. The range of uses include medical or insurance offices, auto repair and service stations, grocery stores, restaurants and personal service facilities. Employment/industrial development has concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses include manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The site’s LI zoning is appropriate for employment/industrial category, but it is not appropriate for local commercial development, which is what the building site is categorized. Because the proposed nightclub is located within 300 feet of a church and B zoned single-family residences a Conditional Use is required.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B. is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” Most of the site will have direct access onto the arterial street Central Avenue. However another property owner’s vacant property, splits/separates the applicant’s proposed parking. This separation means that the north most parking area will not have direct access to an arterial road, Central Avenue, but will access off of the residential streets, Cleveland Avenue and Elm Street.

The site is located within the “McAdams Neighborhood Revitalization Plan,” which shows the portion of the site fronting Central Avenue as suitable for ‘general retail’ and the parking area as ‘general industrial/warehousing.’ The site’s LI zoning is less restrictive the Plan’s general retail designation but is a match for the Plan’s general industrial/warehousing designation. The proposed night club fits into either of the Plan’s use designations with consideration of a Conditional Use.

**RECOMMENDATION:** Protesters have contacted the MAPD in opposition to the requested Conditional Use for nightclub. Opposition sites concerns regarding the potential for illegal and dangerous activity from the proposed nightclub and associated parking. Since the previous request for a nightclub at this site, CON2004-00042, the most recent development in the area appears to remain the 2003 investment into Washington Elementary School. Improvements in the surrounding housing appears to be minimal resulting in a B, GC and LI zoned deteriorating residential neighborhood that could be absorbed by surrounding commercial and industrial uses in the future. Based upon information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a night club in the city be APPROVED, with the following conditions (*with the additional conditions as recommended by the July 9, 2015, MAPC*):

- A. The site for a nightclub shall be developed in conformance with an approved site plan. A site plan must be approved within 90 days of approval by the appropriate governing body for review or the conditional use shall be declared null and void. The site plan shall include, but not limited to, the occupancy of the nightclub (and the size), as posted by the Fire Marshall (see condition E), landscaping, internal circulation and access as approved by the Fire Department, and showing how much parking is required and provided for the night club and the applicant's other buildings and businesses.
- B. No outdoor entertainment, music, no outdoor speakers, recreation, food or drink services are permitted on the site.
- C. Activities for the nightclub shall not be permitted until all required permits and inspections for the facility are finished including the paving and marking of the parking lot. Plans for the paving of the parking lot will include a drainage plan reviewed and approved by the Department of Public Works-Stormwater. All improvements for the night club shall be completed within one year of approval by the appropriate governing body or the conditional use shall be declared null and void.
- D. The applicants shall comply with all applicable development standards of the Unified Zoning Code, including but not limited to parking, screening, and landscaping.
- E. Occupancy for the nightclub hall shall not exceed the required parking for the nightclub and the applicant's other buildings and businesses.
- F. *The nightclub shall close at 11:00 P.M., Sunday-Thursday. The nightclub shall stop selling and serving cereal malt beverage and alcoholic liquor at 12:00 A.M. and close at 12:30 A.M., Friday and Saturday.*
- G. *The nightclub's door located nearest to residential development shall be marked and used as an emergency exit and shall remained closed, except for emergencies, at all times with the intent being to minimize the intrusion of noise, including music, on those residences located closest to the night club.*
- H. The applicant shall obtain, maintain, and comply with all applicable permits and licenses necessary for the operation of a nightclub in the City.
- I. 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 character of the surrounding area is a mix of LI, GC, and B zoned commercial, limited industrial and residential (mostly single-family) uses. A LI zoned steel products facility and storage yard is located north and northwest of the site, across Elm Street, and is the largest development in the area. Since the previous request for a nightclub at this site, CON2004-00042, the most recent development in the area appears to remain the 2003 investment into Washington Elementary School. Improvements in the surrounding housing (built 1910-1920) appears to be minimal resulting in a small B, GC and LI zoned deteriorating residential neighborhood that could be absorbed by surrounding commercial and industrial uses in the future.

2. The suitability of the subject property for the uses to which it has been restricted: The site is currently vacant and zoned LI which can accommodate office, retail, commercial and industrial land uses. Because the proposed night club is located within 300 feet of a church and B zoned single-family residences consideration of a Conditional Use is required.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Currently the sale of alcoholic beverages is prohibited on this site. Approval of this request would allow for unlimited liquor sales, which could have detrimental impacts on the surrounding residences, considering their proximity to the proposed nightclub and associated parking.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide Map of the Comprehensive Plan” identifies the portion of the site where the building is located as appropriate for “local commercial” development and most of the parking area as appropriate for “employment/industrial” development. Local commercial development does not have a significant regional draw that generates a high volume traffic. The range of uses include medical or insurance offices, auto repair and service stations, grocery stores, restaurants and personal service facilities.

Employment/industrial development has concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses include manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The site’s LI zoning is appropriate for employment/industrial category, but it is not appropriate for local commercial development, which is what the building site is categorized. Because the proposed night club is located within 300 feet of a church and B zoned single-family residences a Conditional Use is required.

The site is located within the “McAdams Neighborhood Revitalization Plan,” which shows the portion of the site fronting Central Avenue as suitable for ‘general retail’ and the parking area as ‘general industrial/warehousing.’ The site’s LI zoning is less restrictive the Plan’s general retail designation but is a match for the Plan’s general industrial/warehousing designation. The proposed nightclub fits into either of the Plan’s use designations with consideration of a Conditional Use.

A consideration for the denial of CON2004-00042 was that a portion of the site was designated as appropriate for ‘low density residential’ development on the “2001 Wichita Land Use Guide of the Comprehensive Plan.” The “2030 Wichita Functional Land Use Guide Map of the Comprehensive Plan” has changed that designation as appropriate for “employment/industrial” development. This change is reflecting the “McAdams Neighborhood Revitalization Plan’s” designation of general industrial/warehousing uses. This change may also be in recognition that because of the area being zoned predominately LI, low density residential development is unlikely because of close proximity to industrial zoning and uses.

5. Impact of the proposed development on community facilities: It is possible that approval of this request could result in an increased demand for police services.

**BILL LONGNECKER**, Planning Staff presented the Staff Report. He commented that the site plan and information provided as a handout was received after the Staff Report was written and the agenda mailed. He said after a quick analysis the only difference Staff could find with the original proposal is that activities would shut down one hour earlier on Sundays, hours of operation throughout the week and that no alcohol be served on Sundays. He said those are the changes the applicant has proposed. He commented that staff has continued to receive complaints on the site and they have referred them to MABCD. In addition, he understands that WPD Vice is also involved.

**MILLER STEVENS** asked for clarification on the site plan. She said the site plan that was included with the packet that was previously reviewed by the Planning Commission had hash marks on the nightclub area. She said on the new site plan provided as a handout, all the areas are hashed. She asked if the entire structure is now included as the event center.

**LONGNECKER** commented that the first page of the handout is the seating arrangement.

**RICHARDSON** clarified that according to the code information on the site plan, the actual area is 9,000 square feet and it appears that the cross-hatched nightclub area is approximately 6,270 square feet.

**LONGNECKER** suggested that the applicant nail down how large the event center was going to be.

**RICHARDSON** asked how long the site has been zoned industrial and the history of what has been tried in the area. He asked if you could build a single family residence in industrial zoning today. He said there appears to be a conflict in what the City wants this area to become.

**LONGNECKER** said he hasn't looked at the history of the area but commented that the steel fabrication plant has been there a while. He said in this part of town it is not unusual to see single-family residences that have industrial zoning on them. He said no residential (single-family, duplexes or multi-family) is allowed in industrial zoning today. He referred to the Land Use Map and said this was an area in transition.

**DAILEY** asked if the applicant offered up the provision of no alcohol on Sunday or did the City require that provision.

**LONGNECKER** said the applicant offered that.

**TODD** asked staff where the school and church are located in the neighborhood.

**LONGNECKER** said Washington Elementary School is located near Hydraulic. He said there was a church on Cleveland; however, that was outside the 300 foot area. He said what triggers conditional use in this case is the B Multi-family zoning.

**TED KNOPP, 310 WEST CENTRAL, AGENT FOR THE APPLICANTS** Armando Michel and Jorge Rojas. He said one of the items that kept coming up in discussions was that the proposed land use change is permanent and that once this zoning is changed, the next use can be a nightclub. He commented that the proposed business plan removes all practical utility of this conditional use permit

for a nightclub. He said the applicant has said they will be open Friday and Saturday for events. He said during the week they won't be open after 5:00 p.m. except on limited occasions and mentioned four (4) nights during the week. He also mentioned the week long cultural event. He said they are limiting the proposed use to what would be an event center with events on Friday and Saturday nights. He said Sundays it is clear the applicant's intention is to make this a gathering place for families (open until 10:00 p.m.) such as the applicants experienced in communities in Mexico and San Antonio with large Hispanic populations. He said this business plan design will eliminate the value of the site as a nightclub for the next owner. He said from 11:00 a.m. – 4:00 p.m. the applicant will operate the site as a Mexican restaurant. He said at 5:00 p.m. the location will turn into an event center/nightclub one night a week or if it is rented, it can be open all week for cultural events and other celebrations. He concluded by referencing the letters of support for the event center and said they only received protests when it was described as a nightclub. He said as long as there is music, dancing and alcohol, the City describes this as a nightclub. He said even though they are applying for a nightclub permit, they are trying to make it clear that this is an event center and community gathering spot and the permit will never be able to be used for a traditional nightclub. He mentioned that since the strip center is a day time use and the event center is a night time use, they propose to share the parking.

**ARMANDO MICHEL, 6014 WEST 34<sup>TH</sup> STREET, WICHITA, KANSAS, APPLICANT** said they are proposing an event center for families and for people to make reservations in advance. He said no alcohol will be served on Sundays. He said they plan to have a disc jockey and this will be for families and kids. He said this is not a typical nightclub.

**RICHARDSON** requested clarification on how much of the building will be used for the nightclub. He asked how many total square feet. He asked isn't the legal description for the entire area included in the application.

**KNOPP** said the event center will be approximately 6,270 square feet, with an occupant load of 330 people. He said the address at 1320 is the only portion that is included in the application; the rest of the buildings will retain the existing commercial zoning. He referred to the aerial of the property.

**MILLER** explained that the site plan is the determining factor and only the areas shown on the site plan as being the event center or nightclub will be permitted. He said they will have the applicant revise the map.

**OMPAL CHAUHAN, 31 LAUREL** said he owns residential property directly across from the site. He said one thing that is important in this country is you work hard and play by the rules. He said you don't try to con people into believing something you are not. He commented that they serve both food and alcohol at the location now, but when he checked, the applicant doesn't have a license for either. He said he was told people bring their own food and alcohol but he doesn't know if that is right. He said the neighbors don't know what the plan is because the applicant keeps shifting it like sand. He said in order for the Commission to approve the request they must have a concrete plan so everyone can discuss it and see the benefits for the community. He asked what the capacity of the club was and based on that they can determine how many parking spaces are needed. He said if this is approved without a clear capacity he is afraid that the applicant's patrons will park on the street and block his tenants. He said the neighborhood desperately wants some type of family business in that space but they are not so desperate that they want a liquor store or a place that serves alcohol.

**CHAUHAN** said historically, if you look at the statistics, any place that serves alcohol there are shootings, prostitution and other violations that he doesn't want next to his tenants. He said if his tenants move out, he will be left with a lot of vacancies. He said the applicant almost convinced him it was a good idea, but after looking at the facts there is no truth in it. He asked why the applicant didn't open the nightclub in his own neighborhood. He said people who are low income also entitled to a good night's sleep and a safe place to raise a family. He said the applicant claims to have parking, but right now they are open on Friday and Saturday and half of the cars park on the street. He said when the neighbors asked if they can come see the club they were told, no it is a private club. He said the only benefit the neighborhood is getting from this is traffic and drunks running around the neighborhood and keeping people awake all night. He said if people want progress they have to play by rules and see other people's interest before your own. He said the neighborhood doesn't wish the applicant any ill will and wants him to run a business. He said; however, he wants to be able to run his business at the same time. He said the people who live in that neighborhood don't have a choice to move away so they will have to put up with this. He recommended that the Commission deny this request.

**GOOLSBY** commented that as far as the applicant serving alcohol at the site he knows that they had a licensed bartending service, like a caterer who has a liquor license, there this past Saturday night.

**RICHARDSON** asked for the addresses of the properties Mr. Chauhan owns.

**CHAUHAN** referenced several properties along Cleveland, New York and Mathewson.

**TODD** asked if the home along Cleveland with the code violation was one of Mr. Chauhan's houses.

**CHAUHAN** replied no.

**TODD** asked about bringing in a caterer to serve alcohol if the property is improperly zoned.

**VANZANDT** said he believes there is a provision for caterers to obtain liquor licenses to serve alcohol. He said he doesn't know if there is a provision that says you can't do that in certain zoning areas. He mentioned private parties at homes versus going to a certain location for a one time private party and said he doesn't have a specific answer.

**DAILEY** asked for clarification that even if the applicant agreed not to serve alcohol on Sunday, then a caterer could bring alcohol in to serve a private party.

**MILLER** said a ruling has been made, prior to when he was the Zoning Administrator that anytime you have alcohol, live entertainment and dancing that makes it a nightclub no matter who is supplying the alcohol.

**ARMANDO** \_\_\_\_\_, **215 SOUTH GREEN STREET** said he represents the Seed House Casa Mia which is a local non-profit organization that he co-founded as well as the local art collective, Wichita Army of Artists. He said the applicant has let the organizations use the site for events. He said he understands that the space is for use by the community for family events and that this is not a

nightclub even though regulations label it as such. He said the space is vital to the work of the Seed House and Army of Artists which is to engage unrepresented populations throughout the City particularly Latino immigrants and African Americans who have historically lived in the northeast neighborhood where this site is located. He said in their three (3) years of existence they have created 15 murals in the north end of the City. He said they will host the 2<sup>nd</sup> Annual Urban Arts Festival in October at Nomar Plaza which is a free event for all ages featuring local artists and vendors.

**ARMANDO** \_\_\_\_\_ commented that they are not able to do their work with youth in a lot of spaces because alcohol is served and that means you have to be 21 years old to enter. He said the space the applicant is requesting is ideal because they will be able to host all age events that include music and visual arts. He said the cultural community needs this space to continue to foster cultural events for community youth and all ages. He said they also plan to open the print shop to work and engage the community. He mentioned a garage sale they hosted at the location recently where they got to meet many of the neighbors who were thrilled to know that this corner could be a cultural center to continue to develop the neighborhood. He said the people they engage are not able to go to City Arts or the Wichita Center for the Arts. He concluded by encouraging everyone who lives in the neighborhood and on the Commission to go look at the inside of the space. He asked the Commission to give them the opportunity to continue to work with the community.

**DAILEY** clarified that the type of events they want to host, they don't want alcohol.

**ARMANDO** \_\_\_\_\_ said that is not what he is saying. He said they need a venue for all ages, particularly for musical festivals. He said right now the only options they have for music are bars which exclude youth 14-18 years of age which is a huge portion of people they work with.

**DENNIS** asked if this is rezoned to a nightclub, can people under 21 years old enter.

**MILLER** said he doesn't know the answer. He mentioned restaurants that sell more food than alcohol, but after a certain time they begin selling hard liquor so you have to be over 21 years of age to enter.

**VANZANDT** commented that anytime they are not serving food and serving alcohol at the site, then underage people would not be allowed into the establishment. He said no alcohol will be sold on Sunday's so all ages would be allowed into the venue at that time.

**DENNIS** clarified then Friday and Saturday after 4:00 p.m. no one under 21 can be at an event.

**VANZANDT** said locations being held out for special events would have to be zoned properly even if a caterer with a liquor license was dispensing alcohol at the location.

**PASTOR JOHN RADIG, 956 NORTH MATHEWSON** said he has lived in the neighborhood for the last 16 years. He said he does not believe the McAdams Neighborhood Revitalization Plan includes any type of nightclub in the neighborhood. He said the neighborhood association is also reaching out to neighborhood youth to give them life skills. He mentioned a motorcycle club located in the area that was also "skating around" the issues of alcohol sales, etc. He said this does not belong in the neighborhood. He mentioned driving by the location at 1:00 a.m. and said the parking lot was full and people were in what was the tee-shirt shop smoking a hookah.

**CURTIS BREWER, 1407 and 1413 EAST CENTRAL** said he was present to request that the Commission decline the liquor license. He said he has owned property in the area for 14 years and it has been his experience that nightclubs down there just do not work. He said very Monday morning he has to contend with broken liquor bottles, vomit and all kinds of trash. He said he likes the applicant and is okay with the family event center, but the bottom line is the applicant can't control where people park. He said the neighborhood has been through this before and mentioned a bar that was open across the street from this location. He mentioned property damage on his property because there is not enough parking in the area to sustain a nightclub. He said to enforce parking on his property he has to get up at 2:00 a.m. in the morning, document the Vehicle Identification Numbers and call the WPD. He said when the applicant approached him with a business plan to have an event center for children's birthday parties, etc. he signed on then the next thing he knows they need a liquor license. He said there is not much family stuff that goes along with the nightclub so that is when he removed his support. He requested that the Commission decline the liquor license part. He said as far as a birthday party venue is concerned, he doesn't have a problem with that. He said the challenge is no one can control what goes on in parking the lot.

**RAYMOND SHELLMAN, 624 NORTH CLEVELAND** said he wanted to speak to some of the general issues he sees living in the neighborhood. He said the local beat officer sent him some statistics on crime and bars, especially when there is more than one bar in an area. He mentioned a liquor retailer and several bars within a short distance of this location at Old Town. He said increased crime and violent crime depreciates property values. He mentioned that he owned two (2) homes in the area and has four (4) children. He said there is an on-going parking problem and mentioned that one of the event center's patrons got hit by a vehicle and injured not too long ago. He said patrons from the event center are parking on his property and he has had to call the WPD out several times. He said he does not feel like the applicant is managing his property responsibly. In addition, he said it is questionable whether the applicant is currently complying with some of the items he has conceded to. He said the club currently shuts down anywhere from 12:00 a.m. to 2:00 a.m. He said every Sunday morning there is litter and debris, alcohol cans and boxes all over the parking lot. He said generally someone shows up sometime Sunday to clean that up, but that shows him the applicant is not able to properly manage or control that. In addition, he said there is very little illumination and no signs on the lot. He said there have been 12 homicides in a three (3) block area of this site since 1989 to date. He said four (4) of those were on club properties. He said the area does not have a good history with clubs. He said making revenue is fine but hopefully they don't have to decrease property values and increase crime to do that.

**WARREN** reminded the audience that although the Commission wants to hear from anyone who has a concern, he requested speakers not repeat the same issues over and over again.

**JANET RADIG, 1510 EAST 9<sup>TH</sup> STREET, PRESIDENT, MCADAMS NEIGHBORHOOD ASSOCIATION** said McAdams is looking forward to doing great things for the youth in the area. He said the Second Chance Program they are starting is staffed by retired teachers. She said they are helping youth 15-25 years old with life skills, job preparation and money management. She also mentioned a new community garden going in at 9<sup>th</sup> and Mathewson. She said the neighborhood needs grocery stores, convenience shops, coffee shops and things of that nature, not nightclubs. She said sometimes it's the right thing to say no, and she urged the Commission to say no to the nightclub today.

An audience member who spoke previously asked to come back to the podium.

**VANZANDT** explained that it is City Policy that each speaker gets five (5) minutes to speak with no additional time, unless it is granted at the time you are speaking. He said you can't come back and speak again after you have left the podium.

**KNOPP** commented that the situation on the property improves with the granting of the conditional use permit. He said they will not be operating in this grey area of BYOB, catered business, etc. He said they need to have the correct zoning to apply for the liquor license. He said once you get a liquor license, you consent to have City WPD walk into the establishment at any moment. He said once the conditional use permit is granted the City WPD can monitor the situation. He said if the permit is granted, alcohol will be dispensed inside the location and that way the applicant can have better control of alcohol consumption and activities of people. He said it is a pity that people park on private property, but you can park on public streets, it is a permitted use. He referred to the additional conditions the applicant attached. He said this is an event center and they would like to have the permit granted.

**DENNIS** asked the agent to respond to some of the comments about the trash, liquor bottles and cans, etc. He said if the applicant is not serving alcohol right now where is all that coming from.

**KNOPP** said evidence is that it is being brought onto the property by event participants.

**DENNIS** mentioned the demonstrated track record at the location. He asked how does the Commission know it will be any better in the future if the permit is granted. He added that if this event center wants a family-type environment and to cater to people under 21, do they truly need alcohol.

**KNOPP** replied that if the alcohol is dispensed by the owners of the venue, it can't be carried outside the premises. He asked if people bring alcohol into a venue; how do you keep them from carrying it out. He said once the venue has a liquor license, there are a whole bunch of rules and regulations that apply. He said there is a regulatory scheme to insure compliance and consequences for non-compliance. He said this will make this venue a clean, safe, family environment which is what the City and neighbors are concerned about.

**KNOPP** said he was not Catholic but he has been to many weddings where alcohol is an important part of the celebration. He said alcohol is sometimes a material part of some family celebrations and what people want when they are looking for a venue. He said the Army of Artists and Seed House Casa Mia are looking for a venue where youth can perform and parents and under age friends can come and listen. He asked what Old Town Club is going to let their place be taken over by people who can't drink.

**DAILEY** commented that there was nothing in the conditions about when patrons left the parking lot.

**KNOPP** said once the center is closed for business, he doesn't know of anyone who wants people to linger in the parking lot.

**MILLER STEVENS** requested clarification that the nightclub designation is only needed for what the applicant proposes on Friday and Saturday nights. Otherwise they could just have a restaurant with a liquor license. She said she is still struggling with the nightclub designation.

**MILLER** clarified that if there is alcohol, dancing and/or live entertainment that is by definition is a nightclub. He said there are three (3) levels: A Drinking Establishment Restaurant (DER) like Applebee's where they sell more food than alcohol. He said the applicant can operate in this location doing that, which he believes is what they are proposing up to 4:00 p.m. He said once they quite selling food and are selling alcohol with no entertainment or dancing, then it becomes a tavern. He said because there is residential zoning within 300 feet, the tavern has the same zoning requirement as a nightclub. Once entertainment or dancing is added, that makes it a nightclub. Since that is the most intense activity the applicant is going to have, that is why the nightclub designation is needed.

**MILLER STEVENS** asked about having alcohol, dancing and entertainment and people under age 21.

**MILLER** said he does not know if they can do that, or if that is a legal activity. He said that is a Code Enforcement issue.

**LONGNECKER** said alcohol can be served Monday through Saturday as part of the event center. He mentioned the Operation Plan that was received after the agenda mail out which indicates the only day alcohol will not be served is Sunday.

**RAMSEY** stated that the first time he heard this he was a little confused. He said when he hears the term event center or community center he is thinking about something like Venue 21 where you hire a caterer to bring in alcohol. He said patrons bringing in alcohol themselves is something different but he thought they were talking about a nightclub because they are mixing the uses. He said what they are truly talking about here is a nightclub, not an event center, even though they are trying to use it as one. He said he did not understand that the applicant was going to be selling alcohol on the premises. He said he also appreciated the input from the adjacent business owner about what he is experiencing now or in the past. He said he is inclined to decline the application at this time.

**DENNIS** said he agreed with Commissioner Ramsey and said when he heard this case before he voted in favor of it. However, the more information he has received this is not an event center like they were led to believe. He said he appreciates the people who came forward to speak today.

**MOTION:** To deny the application.

**DENNIS** moved, **RAMSEY** seconded the motion, and it carried (12-1). **WARREN** – No.

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5. **Case No.: ZON2015-00024 (Deferred Indefinitely)** - County Hollow, LLC (applicant) and MKEC Engineering Inc. (c/o Brian Lindebak) (agent) request a City zone change from SF-5 Single-family Residential to MF-18 Multi-family Residential, generally located South of E. Kellogg and east of #. 127<sup>th</sup> Street (north of Gilbert Street).

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6. **Case No.: ZON2015-00025 and CUP2015-00011(Deferred Indefinitely)** - County Hollow, LLC (applicant) and MKEC Engineering Inc. (c/o Brian Lindebak) (agent) a City zone change from SF-5 Single family Residential and LC Limited Commercial to GC General Commercial and creation of a CUP Community Unit Plan, generally located East of E. 127<sup>th</sup> Street and south of E. Kellogg (north of Gilbert Street).

7. **Case No.: ZON2015-00032 (Deferred from the 9-3-15 Hearing)** - K & A Holdings, LLC, c/o Rodney Ketzner and Isaiah Ast request a City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential on property described as:

Lot 15, Block 11; Downtain's 1<sup>st</sup> Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is requesting TF-3 Two-Family Residential (TF-3) zoning on the platted approximately 75-foot (x) 100-foot SF-5 Single-Family Residential (SF-5) zoned site. The subject site, Lot 15, Block 11, Downtains 1<sup>st</sup> Addition, is located 220 feet east of Sheridan Avenue on the north side of May Street.

Extensive LI limited Industrial (LI) zoned land, active railroad tracks and Kansas Highway K-42 define the boundaries of the subject site's small single-family residential neighborhood. SF-5 zoned single-family residences (built mid and late 1950s and 1970) abut and are adjacent to the east, west and north sides of the subject site. A TF-3 zoned duplex (built 1977) is located the next block northeast of the subject site. LI zoned vacant land and railroad tracks are located three blocks east of the site. The LI zoned Metal Fab steel fabrication facility (built 1972-2007) is located south of the site, across May Street. More LI zoned manufacturing facilities, office-warehousing and similar uses, with some undeveloped lands are located a half a block west of the site, across Sheridan Avenue, and a half block south of the site, across May Street and active railroad tracks.

**CASE HISTORY:** The site is platted as Lot 15, Block 11, Downtains 1<sup>st</sup> Addition, which was recorded with the Register of Deeds on May 11, 1955.

**ADJACENT ZONING AND LAND USE:**

NORTH: SF-5, LI Single-family residences, two duplexes, railroad tracks

SOUTH: LI Steel fabrication building, railroad tracks, manufacturing, office-warehousing, vacant land

WEST: SF-5, LI Single-family residences, office-warehousing

EAST: SF-5, LI Single-family residences, railroad tracks

**PUBLIC SERVICES:** The site has access to May Street, a paved two-lane local street. May Street intersects with K-42 Highway two-blocks west of the site. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The "2013 Land Use Guide of the Comprehensive Plan" identifies the SF-5 zoned site as "urban residential." The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly. Elementary

and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category. The site's current SF-5 zoning allows single-family residential, as well as some institutional uses, but not duplexes, by right. The proposed TF-3 zoning allows a duplex, as well as single-family residential and some institutional uses by right. Both the current SF-5 zoning and the requested TF-3 zoning conform to the urban residential category. If approved, the requested TF-3 zoning will permit the second duplex into the neighborhood.

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

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** Extensive LI zoned land, active railroad tracks and Kansas Highway K-42 define the boundaries of the subject site's small single-family residential neighborhood. SF-5 zoned single-family residences (built mid and late 1950s and 1970) abut and are adjacent to the east, west and north sides of the subject site. A TF-3 zoned duplex (built 1977) is located the next block northeast of the subject site. LI zoned vacant land and railroad tracks are located three blocks east of the site. The LI zoned Metal Fab steel fabrication facility (built 1972-2007) is located south of the site, across May Street. More LI zoned manufacturing facilities, office-warehousing and similar uses, with some undeveloped lands are located a half a block west of the site, across Sheridan Avenue, and a half block south of the site, across May Street and active railroad tracks.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The SF-5 zoned property faces a two-block long, LI zoned metal steel fabrication facility and its parking lot. The site's SF-5 zoned neighborhood is located against the east edge of an extensive area of LI zoned lands, beginning at Kellogg Street (north) to 47<sup>th</sup> Street South, extending to the Big Ditch on its west side and at points to Meridian Avenue on its east side. The site and the neighborhood are located over the All Hollows groundwater contamination plume, which reflects the industrial nature of the surrounding area. The site's location makes it less desirable for any residential development.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested TF-3 zoning allows duplexes as well as single-family residences and some institutional uses by right. The request would not introduce TF-3 zoning into the area.
- (4) **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Approval of the request would limit development by right to single-family residential, duplex, and some (but not limited to) institutional uses such as a parks, schools and churches. If approved a duplex would be the first residence built in the neighborhood since 1977, when the only other duplex was built. Denial of the request could impose a financial hardship on the owner.

- (5) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2013 Land Use Guide of the Comprehensive Plan” identifies the SF-5 zoned site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly. Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category. The site’s current SF-5 zoning allows single-family residential, as well as some institutional uses, but not duplexes, by right. The proposed TF-3 zoning allows a duplex, as well as single-family residential and some institutional uses by right. Both the current SF-5 zoning and the requested TF-3 zoning conform to the urban residential category. If approved, the requested TF-3 zoning will permit the second duplex into the neighborhood.
- (6) **Impact of the proposed development on community facilities:** All services are in place and any increased demand on community facilities, as a result of the proposed TF-3 zoning, can be handled by current infrastructure.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**RICHARDSON** asked if any protests were received from surrounding property owners.

**LONGNECKER** said he has not received any written or verbal protests on the application. He added that the DAB approved it unanimously.

There were no public comments.

**MOTION:** To approve subject to staff recommendation.

**GOOLSBY** moved, **RAMSEY** seconded the motion, and it carried (13-0).

8. **Case No.: ZON2015-00033** - KW Developments, LLC (applicant/owner) request a City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential on property described as:

Lots 19 and 20, Block 17, Fruitvale Park Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is requesting TF-3 Two-Family Residential (TF-3) zoning on the platted approximately 120-foot (x) 191.85-foot (23,022-square foot) SF-5 Single-Family Residential (SF-5) zoned site. The subject site, Lots 19 and 20, Block 17, Fruitvale Park Addition, is located a block south of Central Avenue on the southeast corner of Hoover Avenue and Newell Street. The site is also located approximately 300 feet east of Interstate Highway I-235. The site could be developed with three duplexes.

The subject site has SF-5 zoned single-family residences abutting its south and east sides; built 1970, 1931, 1950 and 1954. The site and these abutting properties are part of a mostly SF-5 zoned, single-family residential neighborhood that is located south, east and west of the site. Most of the residences in the neighborhood are small (+/- 1,000-square feet), wood framed homes, having been built in the 1940s. A SF-5 zoned civic organization, the Serenity Club of Wichita, is located directly west of the site, across Hoover Avenue. TF-3 zoned single-family residences (most built in the 1940s) and a few duplexes (built 1970s or later) are located north and northwest of the site, across Newell Street. It appears that the most recent residential development in the area are two duplexes built in 2009, located northwest of the site. The residential development located north of the site eventually ends up against LC Limited Commercial zoned older, small scale commercial development located along the arterial Central Avenue. The immediate area north, west and east of the site, also has some SF-5 zoned properties that appear to have been split by sale, resulting in small properties that are less than 5,000-square feet in area.

**CASE HISTORY:** The site is platted as Lots 19 and 20, Block 17, Fruitvale Park Addition, which was recorded with the Register of Deeds on October 30, 1929.

**ADJACENT ZONING AND LAND USE:**

|                      |   |
|----------------------|---|
| NORTH: TF-3          | Single-family residences, few and scattered duplexes        |
| SOUTH: SF-5, TF-3    | Single-family residences, few and scattered duplexes        |
| WEST: SF-5, TF-3, LC | Single-family residences, a civic club, two duplexes, I-235 |
| EAST: SF-5, TF-3     | Single-family residences, a duplex                          |

**PUBLIC SERVICES:** The site has access to Newell Street, a sand and gravel local street and Hoover Avenue, a paved and curbed, two-lane collector street. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The “2013 Land Use Guide of the Comprehensive Plan” identifies the SF-5 zoned site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly. Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category. The site’s current SF-5 zoning allows single-family residential, as well as some institutional uses, but not duplexes, by right. The proposed TF-3 zoning allows a duplex, as well as single-family residential and some institutional uses by right. Both the current SF-5 zoning and the requested TF-3 zoning conform to the urban residential category. If approved, the requested TF-3 zoning will permit another duplex into the neighborhood.

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

This recommendation is based on the following findings:

- (7) **The zoning, uses and character of the neighborhood:** The subject site has SF-5 zoned single-family residences abutting its south and east sides; built 1970, 1931, 1950 and 1954. The site and these abutting properties are part of a mostly SF-5 zoned, single-family residential neighborhood that is located south, east and west of the site. Most of the residences in the neighborhood are small (+/- 1,000-square feet), wood framed homes, having been built in the 1940s. A SF-5 zoned civic organization, the Serenity Club of Wichita, is located directly west of the site, across Hoover Avenue. TF-3 zoned single-family residences (most built in the 1940s) and a few duplexes (built 1970s or later) are located north and northwest of the site, across Newell Street. It appears that the most recent residential development in the area are two duplexes built in 2009, located northwest of the site. The residential development located north of the site eventually ends up against LC Limited Commercial zoned older, small scale commercial development located along the arterial Central Avenue. The immediate area north, west and east of the site, also has some SF-5 zoned properties that appear to have been split by sale, resulting in small properties that are less than 5,000-square feet in area.
- (8) **The suitability of the subject property for the uses to which it has been restricted:** The SF-5 zoned property is located within a mostly SF-5 zoned neighborhood of small (+/- 1,000-square feet) single-family residences, with most of them built in the 1940s. The site could be developed as a single-family residence, like the abutting south property which was built in 1970.
- (9) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested TF-3 zoning allows duplexes as well as single-family residences and some institutional uses by right. The request would not introduce TF-3 zoning or duplexes into the area.
- (10) **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Approval of the request would limit development by right to single-family residential, duplex, and some (but not limited to) institutional uses such as a parks, schools and churches. If approved the duplexes would be the first residence built in the neighborhood since 2009, when the two duplexes were built, northwest of the site, across Hoover Avenue and Newell Street. Denial of the request could impose a financial hardship on the owner.
- (11) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2013 Land Use Guide of the Comprehensive Plan” identifies the SF-5 zoned site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly. Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category. The site’s current SF-5 zoning allows single-family residential, as well as some institutional uses, but not duplexes, by right. The proposed TF-3 zoning allows a duplex, as well as single-family residential and some institutional uses by right. Both the current SF-5 zoning and the requested TF-3 zoning conform to the urban residential category. If approved, the requested TF-3 zoning will permit another duplex into the neighborhood.

- (12) **Impact of the proposed development on community facilities:** All services are in place and any increased demand on community facilities, as a result of the proposed TF-3 zoning, can be handled by current infrastructure.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

He reported that DAB VI approved the application unanimously. He added that he has received no negative comments or protests on the case.

**RICHARDSON** asked about restricting access to Hoover.

**LONGNECKER** said there is no platted access control on this subdivision.

There were no public comments.

**MOTION:** To approve subject to staff recommendation.

**TODD** moved, **DENNIS** seconded the motion, and it carried (13-0).

9. **Case No.: ZON2015-00034** - Downtown Investments, LLC & Washington Development, LLC, c/o Paul Gray(owner/applicant) request a City zone change from LC Limited Commercial to CBD Central Business District on property described as:

Lots 84, 86, 88, 90, 92 and 94, Chicago now Douglas Avenue; West Wichita Addition, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is requesting a zone change form LC Limited Commercial to CBD Central Business District on the subject site located west of McLean Boulevard, east of Oak Street on the south side of Douglas Avenue; Lots 84, 86, 92 and 94, Chicago now Douglas Avenue; West Wichita Addition. The site is located in (and subject to) the Delano Overlay Neighborhood District (D-O). The site's brick or fake stucco one and two-story downtown row stores (built 1928, 1930 and 1950) are currently occupied by several restaurants and retail. An expansion of the site's pizza restaurant triggered conformance to parking standards for the restaurant. The CBD zoning district more effectively resolves such issues as parking (no minimum parking standards) and setbacks that could be triggered by a change in occupancy. This is the latest application for CBD zoning in the D-O along Douglas Avenue and in the future there will be more applications for CBD zoning along Douglas Avenue within the D-O for the MAPC to consider. In the previous zoning cases a lack of on-site parking was the issue.

The Delano District was initially developed in the 1870's and then redeveloped in the early 1900's when there were no requirements for property owners to provide on-site parking. Therefore, many of the uses in the Delano District do not have on-site parking, but have relied on parking located on public street right-of-way to support their businesses. The applicant does own undeveloped property located south of the site across a platted alley that, with improvements, could provide on-site parking for their properties.

A Metropolitan Area Planning Department (MAPD) parking study of West Douglas Avenue between Sycamore Street and Seneca Street reveals that most of the businesses fronting this described portion of Douglas Avenue do not provide the current code required number of off-street parking spaces. The MAPD analysis estimates that 5,373 off-street spaces are required, but an estimated 3,989 spaces have been provided.

This section of Douglas Avenue is characterized by the prevalence of brick one to two-story downtown row stores mostly built in the early 1900s. All buildings along this section of Douglas Avenue were built up to the property lines, with no setbacks. It is not uncommon to have apartments located in the second story of these buildings, with the commercial uses located on the ground floor.

As previously noted the LC zoned site is occupied by a several restaurants and assorted retail. More LC zoned retail, offices, restaurants and a bar abut and are adjacent to the east side of the site. Development located north of the site, across Douglas Avenue, include LC zoned coffee shop/bar, luggage sales, office furniture sales, offices, restaurants and retail. Development abutting the west side of the site is a LC zoned design studio. West across Oak Street is a GC General Commercial zoned savings and loans. Properties located south of the site, across a paved 15-foot wide platted alley, include undeveloped GC zoned land, a car parts store, a plumbing contractor's business and a LI Limited Industrial zoned vacant building that appears to be undergoing renovation. GC and LC zoned Lawrence-Dumont baseball stadium and a church (with relatively large parking lots for this part of the D-O) are located southeast of the site and the Douglas Avenue round-about, across Sycamore Street.

**CASE HISTORY:** The site, Lots 84, 86, 92 and 94, Chicago now Douglas Avenue; West Wichita Addition, which was recorded with the Register of Deeds on August 5, 1872. Wichita was platted in 1870 and incorporated in 1871.

**ADJACENT ZONING AND LAND USE:**

|               |   |
|---------------|---|
| NORTH: LC     | Coffee shop/bar, luggage sales, furniture store, offices, restaurants, retail |
| SOUTH: GC, LI | Car parts sales, undeveloped land, plumbing contractor, vacant building       |
| EAST: LC      | Retail, offices, restaurants, a bar, church, ballpark                         |
| WEST: GC      | Design studio, savings and loans  |

**PUBLIC SERVICES:** The site is served by all normally supplied municipal services. The site has access to the arterial street, Douglas Avenue, which has 100 feet of right-of-way and the local street, Oak Street, which has 80 feet of right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The purpose of the LC zoning district is to accommodate retail, commercial, office and other complementary land uses. LC zoning is generally compatible with the "local commercial" designation of the "Wichita-Sedgwick County Comprehensive Plan." It is intended for application primarily within the City of Wichita, although it may be appropriate for application in areas of unincorporated Sedgwick County that have been designated as "Wichita 2030 Urban Growth Area."

The purpose of the CBD zoning district is to accommodate retail, commercial, office and other complementary land uses within the downtown core area of the City of Wichita. The CBD district is generally compatible with the “Downtown Regional Center” designation of the “Wichita-Sedgwick County Comprehensive Plan.” It is intended for application only within the City of Wichita and only within the downtown core area and certain nearby areas being redeveloped with similar patterns of uses and site development standards such as but not limited to zero lot setbacks, shared parking, public streetscapes as landscaping and urban design elements and mixed uses within a building. The requested CBD zoning is the appropriate zoning for this site, which is located west (across the Arkansas River) of the original CBD zoned core of downtown Wichita. The area the site is located in shares some similar patterns of uses as the original CBD core area. Previous request for CBD zoning in the D-O along Douglas Avenue have been approved by the MAPC.

The Delano Neighborhood Plan indicates the site is appropriate for commercial mixed uses. The intent of the commercial mixed use designation is to encourage true mixed-use facilities wherein there is commercial and/or offices on the ground floor, and residential above.

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

This recommendation is based on the following findings:

(1) The zoning, uses and character of the neighborhood: This section of Douglas Avenue is characterized by the prevalence of brick one to two-story downtown row stores mostly built in the early 1900s. The LC zoned site is occupied by a several restaurants and assorted retail. More LC zoned retail, offices, restaurants and a bar abut and are adjacent to the east side of the site. Development located north of the site, across Douglas Avenue, include LC zoned coffee shop/bar, luggage sales, furniture store, offices, restaurants and retail. Development abutting the west side of the site is an LC zoned design studio. West across Oak Street is a GC General Commercial zoned savings and loans. Properties located south of the site, across a paved 15-foot wide platted alley, include undeveloped GC zoned land, a car parts store, a plumbing contractor’s business and a LI Limited Industrial zoned vacant building that appears to be undergoing renovation. GC and LC zoned Lawrence-Dumont baseball stadium and a church (with relatively large parking lots for this part of the D-O) are located southeast of the site and the Douglas Avenue round-about, across Sycamore Street.

(2) The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC, subject to the D-O Overlay, which permits a wide range of uses including residential, office and retail sales, subject to the Delano Overlay. Surrounding property is zoned similarly as the subject site. As currently zoned, the site could likely be put to economic use.

(3) Extent to which removal of the restrictions will detrimentally affect nearby property: The CBD district permits a broader range of commercial uses; however, the D-O district prohibits a significant range of uses regardless of a site’s base zoning. The D-O district also requires a substantial number of uses to obtain “conditional use” approval even though the use may be a permitted use by the base zoning district: car wash, manufacturing, warehousing or wholesale or business services. Because of the overlay zoning district, approval of the request should not negatively impact nearby uses.

(4) Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The purpose of the LC zoning district is to accommodate retail, commercial, office and other complementary land uses. LC zoning is generally compatible with the "local commercial" designation of the "Wichita-Sedgwick County Comprehensive Plan." It is intended for application primarily within the City of Wichita, although it may be appropriate for application in areas of unincorporated Sedgwick County that have been designated as "Wichita 2030 Urban Growth Area."

The purpose of the CBD zoning district is to accommodate retail, commercial, office and other complementary land uses within the downtown core area of the City of Wichita. The CBD district is generally compatible with the "Downtown Regional Center" designation of the "Wichita-Sedgwick County Comprehensive Plan." It is intended for application only within the City of Wichita and only within the downtown core area and certain nearby areas being redeveloped with similar patterns of uses and site development standards such as but not limited to zero lot setbacks, shared parking, public streetscapes as landscaping and urban design elements and mixed uses within a building. The requested CBD zoning is the appropriate zoning for this site, which is located west (across the Arkansas River) of the original CBD zoned core of downtown Wichita. The area the site is located in shares some similar patterns of uses as the original CBD core area.

The Delano Neighborhood Plan indicates the site is appropriate for commercial mixed uses. The intent of the commercial mixed use designation is to encourage true mixed-use facilities wherein there is commercial and/or offices on the ground floor, and residential above.

(5) Impact of the proposed development on community facilities: There will be minimal impact on community facilities.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

There were no public comments.

**MOTION:** To approve subject to staff recommendation.

**GOOLSBY** moved, **RAMSEY** seconded the motion, and it carried (13-0).

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- 10. Case No.: DER2015-00005 (Deferred from 7-23-15 Hearing)** - Amendment to the Wichita Sedgwick County Unified Zoning Code sections dealing with zoning area of influence.

**BACKGROUND:** On Wednesday June 10, 2015, at its regularly scheduled meeting the Board of Sedgwick County Commissioners (BoCC) directed staff to process an amendment to the Wichita-Sedgwick County Unified Zoning Code (UZC) that would, if approved, eliminate "zoning area of influence" (ZAOI) review authority.

The Metropolitan Area Planning Commission (MAPC) held a hearing on July 23, 2015. Minutes of the meeting are attached. Comments made by speakers at the July 23, 2015, meeting are summarized in the following eight paragraphs.

Cheney requested that the ZAOI not be eliminated entirely, and noted that Cheney would agree to change the designation of the ZAOI to be the same as the city's "urban growth area" as shown on the comprehensive plan and would be willing to change the unanimous vote requirement associated with a recommendation of denial. If the existing procedure were to be changed Cheney would like to receive advanced notice.

Mount Hope indicated it was opposed to the proposed amendment.

Goddard requested that the MAPC table the item in order to allow for more time to discuss the proposal.

Haysville indicated that it would be willing to use the "urban growth area" as the new ZAOI boundary, would not be opposed to changing the unanimous vote requirement to super majority vote, and is willing to allow the applications to be presented to the city after the MAPC hearing if that prevents a delay in obtaining a final answer.

Derby prefers for the ZAOI to remain. The cities need to be involved in development decisions that impact them and would like to have more time to discuss the proposal.

Maize was opposed to the proposal would be willing to substitute the unanimous vote requirement with a two-thirds super majority requirement; reduce the land area included within a city's territory to one mile beyond its city limits, or to the future growth area as shown on the County's adopted comprehensive plan land use map; and allow the city ZAOI meeting to occur after the MAPC hearing but before BoCC hearing or final approval.

Colwich wanted the MAPC to delay any decision to provide more time to discuss the issue.

Mulvane noted that it has extra-territorial jurisdiction in Sumner County and would like to retain the same authority in Sedgwick County, and asked for the request to be tabled.

At the end of the July 23, 2015, public hearing, the MAPC deferred final action on the request to September 17, 2015, and requested that the cities submit comments in writing. Written comments have been received from the following cities: Haysville, Clearwater, Mount Hope, Bel Aire, Valley Center, Park City, Mulvane, Colwich and Derby. (The comments are attached.) In general, the comments express opposition to the proposal.

The Wichita-Sedgwick County Unified Zoning Code (UZC) contains provisions that require certain development applications on properties located within specific geographic areas surrounding 17 of Sedgwick County's cities are to be presented to the specified cities' planning commissions prior the applications being presented for consideration by the Metropolitan Area Planning Commission (MAPC) and/or the BoCC. The defined geographic area surrounding the 17 cities that trigger review by a city's planning commission is known as the "zoning area of influence" (ZAOI). Seventeen of the County's cities have ZAOI authority. The cities of Viola, Wichita and Eastborough do not have ZAOI authority.

A map of the current ZAOI boundaries is attached. Only zoning, conditional use, community unit plan and planned unit development applications fall under ZAOI review requirements. Other development applications such as: plats, dedications, administrative adjustments or lot splits are not subject to ZAOI review requirements. The UZC specifies that applications requiring ZAOI review must be presented to the city's planning commission having ZAOI authority prior to review by the MAPC or the BoCC. If the planning commission having ZAOI authority recommends denial the application can only be approved by a unanimous vote of the BoCC. The unanimous vote requirement to override a recommendation of denial by a city having ZAOI review authority is unique to ZAOI procedure. Applications not subject to ZAOI review can be approved with either a simple majority, two-thirds or three-fourths majority vote.

"Zoning area of influence" review was established in 1985 when Sedgwick County adopted county-wide zoning. Presumably the concept of ZAOI was intended as a substitute for those jurisdictions that had enacted "extra-territorial zoning authority." K.S.A. 12-715b allows cities to adopt zoning regulations affecting all or any designated portion of the land located outside the city but within three miles thereof under certain conditions, except that for floodplain regulations in areas designated as a floodplain. K.S.A. 12-715b.(a) states a city may establish three mile ring zoning if: the city has established a planning commission per K.S.A. 12-702, and which provides for the appointment of two commission members who reside outside the city but within the area subject to the zoning regulations of the city or the city has a joint, metropolitan or regional planning commission in cooperation with the county in which the city is located; (b) the land outside the city has been included within a comprehensive plan recommended by either of such planning commissions and has been approved by the city governing body or the board of county commissioners and (c) the county has specifically excluded the land from county zoning regulations or the county does not have in effect zoning regulations for such area. The city wishing to initiate three mile ring zoning must notify the county commissioners in writing 60 days before initiating zoning regulations.

It is also likely that ZAOI was included in the County zoning code as a vehicle to assure cities that county-wide zoning would not be detrimental to the cities' growth and development interests since it is likely that development located on the borders of a city will ultimately be annexed by a city. Once annexed, the city will have to deal with any residual issues associated with the development, such as, nonconforming uses created by different zoning, building or fire codes, or the conversion from on-site sewer or water services to municipal services. Attached is a summary of County applications from June 2010 to present, prepared by the County Counselor's office. The summary notes that there were a total of 86 County cases filed; 34 of which were in a ZAOI. Since October 1991, only four applications have received a recommendation of denial from one of the cities, and then overridden by a unanimous vote of the BoCC.

Since the 1990's there have been three or four reviews of the ZAOI requirements. Most of the reviews have been triggered by requests from one or more of the cities that have ZAOI authority to expand the area covered by a specific city's ZAOI. Some of the requests to enlarge a city's ZAOI have been approved; others have been denied.

Positions against having ZAOI review have traditionally been one of the following: 1) State law grants counties the senior authority to exercise zoning jurisdiction on unincorporated lands, and only provides cities the authority to establish extra-territorial zoning when the county has not established zoning in the area surrounding the city. 2) The unanimous vote requirement of the BoCC to override a recommendation of denial by a city with ZAOI authority is overly onerous. There are not any other development applications that require a unanimous vote to gain approval; therefore, development applications with a ZAOI have more risk than similar applications located outside of ZAOI territory. 3) The ZAOI review process can delay the final disposition of a development application because of the requirement that the cities ZAOI meeting occur before the MAPC can hear the request. Fifteen of the 17 cities with ZAOI authority meet only once a month; while the MAPC meets twice a month. Depending on when an application is filed relative to the meeting dates of the city with ZAOI review authority, an application can be delayed from a typical time frame. The delay can vary from one to three weeks. 4) Property owners living inside a ZAOI do not have an opportunity to vote for or against city council members who make appointments to a city's planning commissions that has ZAOI authority. 5) Courtesy notices could be provided to cities and a representative from a city could appear before the MAPC and/or the BoCC and provide comments.

In the past, the following suggestions to change the existing ZAOI process short of eliminating the procedure completely have been presented (not presented in any order of preference): 1) Modify the unanimous vote requirement to override a recommendation of denial to a simple majority or a two-thirds or three-fourths super majority vote. 2) Reduce the geographic area included in some or all ZAOI territory. 3) Eliminate the requirement that applications are required to go to the planning commission of a city with ZAOI jurisdiction prior to the MAPC hearing. Change the process to allow the case to be presented to the city after MAPC's hearing but before BoCC consideration, or if BoCC consideration is not required, before final approval.

Those opposed to eliminating ZAOI authority have indicated: 1) The process promotes collaboration on development applications between the County's less populace cities and County departments that will be responsible for issuing permits or conducting inspections. 2) The requirement for a hearing before a city's planning commission grants an opportunity for the city to provide an official, voted upon, response, instead of an opinion offered by an individual city representative. 3) All of the planning commissions with ZAOI meet at night, which makes it more convenient for county residents to attend the planning commission meeting. 4) Compared to downtown Wichita, the cities with ZAOI are generally more centrally located to the citizens most impacted by an application and would wish to attend the zoning hearing.

The following UZC sections are proposed to be deleted.

#### Article I, Section I-G. ZONING AREAS OF INFLUENCE

In order to provide for review of zoning map amendment requests by the planning commissions in the second and third class cities of Sedgwick County, the Governing Body of the County has adopted and hereby maintains Zoning Areas of Influence around such communities.

1. Map adopted. The "Zoning Areas of Influence Map," originally adopted January 1, 1985, and amended from time to time, is hereby adopted as part of this Code.
2. Interpretation of boundaries. The rules for interpreting the boundaries of the Zoning Areas of Influence shall be the same as for interpreting the boundaries of

zoning districts, as set forth in Sec. III-A.5.

3. Amendments. The procedures for changing Zoning Area of Influence boundaries are set out in Sec. V-K.

Article II, Section II-B.14.u. Zoning Areas of Influence means the area surrounding second and third class cities in Sedgwick County, as shown on a map originally adopted January 1, 1985, as amended from time to time. See Sec. I-G.

Article V, Section V-K. AMENDMENTS TO AREA OF INFLUENCE BOUNDARIES

1. Initiation of amendment request. Proposed changes to the boundaries of the areas of influence may be initiated through application filed with the Planning Director by any planning commission of a city of the second or third class within the County, by the Metropolitan Area Planning Commission or by the Board of County Commissioners.

2. Planning Commission hearing. The Planning Director will establish a time and date for a hearing before the Metropolitan Area Planning Commission and will notify the mayor and planning commission of any affected city, the Metropolitan Area Planning Commission and the Board of County Commissioners of the date, time and place of said hearing. After consideration of the evidence and arguments presented at the hearing, the Metropolitan Area Planning Commission shall recommend approval, approval with conditions or modifications, or disapproval of the proposed change.

3. Board of County Commissioners' hearing. The Planning Director shall forward the Planning Commission's recommendation to the Board of County Commissioners. The Board of County Commissioners may accept, modify or reject the recommendation of the Planning Commission. The action of the Board of County Commissioners on any proposed change to an area of influence boundary shall be final.

Article VI, Section VI-B.6. Amendments to Area of Influence boundaries. The Governing Body of Sedgwick County shall have the authority to approve, approve with conditions or modifications, or deny applications for amendments to Zoning Area of Influence boundaries. The Governing Body's decision shall be the final local action on such an application.

Article VI, Section VI-C.6. Amendments to Area of Influence boundaries. The Planning Commission shall have the authority to review and recommend to the Governing Body approval, approval with conditions or modifications, or denial of applications to amend Area of Influence boundaries.

Article VI, Section VI-D.4. Amendments to Area of Influence boundaries. The planning commission of a second or third class city shall have the authority to initiate an application to amend the subject city's area of influence boundary.

**CASE HISTORY:** Prior to 1985 Sedgwick County did not have county-wide zoning regulations. Some of the cities in Sedgwick County had been granted Sedgwick County three mile ring extraterritorial zoning - Valley Center (1-17-69), Mulvane (3-16-67), Derby (11-15-63), Haysville (9-8-61), Cheney (11-8-73), Goddard (11-12-69) and Wichita (3-3-58). Grandriver Township was granted zoning authority on September 12, 1963. (The dates of adoption of Sedgwick County extraterritorial zoning previously noted were found in March 11, 1971 and July 28, 1987, memos from Jack Galbraith, Chief Planner, Current Plans.)

In an October 13, 1983, memo from Robert Lakin, Director of Planning, stated in January 1981, the County Commission had received several requests from second and third class cities for extraterritorial subdivision and zoning jurisdiction. Lakin noted in his memo that “at that time County zoning existed around ten cities (including Wichita) and there were four cities with zoning jurisdiction in their own three mile ring with four more cities considering their own three mile ring extraterritorial zoning. It was pointed out that there was a possibility of having eleven or more sets of zoning regulations, five sets of subdivision regulations and one building code regulating development in the unincorporated county.” Lakin’s memo notes that subdivision regulations cover the entire county, while one-third of the county is unzoned. Metropolitan Area Planning Department staff held meetings with representatives of cities of the second and third class to discuss zoning and subdivision jurisdiction.

The MAPC held public hearings on October 22, 1981, regarding zoning and subdivision authority. Lakin’s memo further states “Generally the representatives [from the cities] felt that there was a need to zone the unzoned areas. Representatives from the cities with existing City extraterritorial zoning felt that they should be allowed to keep their zoning. The discussion of subdivision regulations indicated that the existing jurisdictions should be retained.” A second public hearing was held on April 22, 1982, at which time the MAPC voted to recommend that the subdivision jurisdictions remain the same; that the entire unincorporated area of Sedgwick County be included under County zoning regulations; and in order to give a stronger voice to the second and third class cities, that areas of influence be established and incorporated into the zoning regulations. Use of the area of influence would mean that when a City Planning Commission recommended denial of a rezoning request in their area of influence, it would require a unanimous vote of the County Commission to approve the change. On June 2, 1982, the County Commission concurred with the recommendation of the MAPC and directed staff to prepare the necessary text changes to incorporate the “area of influence.”

Lakin’s memo further states that MAPD staff prepared zoning area of influence maps with boundaries that “represent our understanding of the boundaries requested by each city at the meetings.” Lakin also notes that “Most of the comments staff has heard have been from those cities that will lose their extraterritorial zoning jurisdictions. They desire to retain their zoning areas and feel that they are better suited to act on development in their area.” “Cities currently surrounded by County zoning have not made many comments about the concept of county wide zoning but do not seem to have objections to county wide zoning.”

By March, 1984, the cities of Mt. Hope, Andale, Colwich, Maize Sedgwick, Garden Plain and Clearwater had local city three mile ring zoning. Countywide zoning was adopted January 1, 1985.

Prior to 1985, builders, developers and citizens in Sedgwick County had 15 different sets of zoning regulations dealing with land use in force. Therefore, it was desirable to substitute a single set of uniform zoning regulations that applied county wide in place of the multi-jurisdictional situation then in effect. As noted above, state law allows the County to establish zoning regulations in the county that supersede a city's extra-territorial zoning jurisdiction. To make countywide zoning attractive to all the cities in the County, the 1985 Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas, established the "zoning area of influence" concept and procedures.

Section 1.C.1 of the 1985 County Zoning Code stated that in order to provide for consideration by the City Planning Commissions of the second and third class cities in Sedgwick County of certain rezoning requests, Zoning Areas of Influence, as shown on the Zoning Areas of Influence Map dated January 1, 1985 is hereby established. Section 17.C.4 stated that for changes in zoning classification or district boundaries or for conditional use or special permit use requests for property located within the zoning area of influence for any city of the second and third class within Sedgwick County, the planning commission of that city may hold a public hearing and make a recommendation to the Commission. In making its recommendation, the city's planning commission shall consider the factors listed in Section 17.C.5 (the Golden factors). The MAPC shall hold a public hearing for the zone change request or conditional use or special use request and consider the recommendation of the city's planning commission before issuing its recommendation to the Governing Body. The Governing Body shall not approve the request, except by unanimous vote, when the city's planning commission recommends against the request.

The 1985 County Zoning Code contained a map defining each city's ZAOI boundary. It can be noted that the area covered by each city's individual ZAOI varied considerably. Maize and Bentley had the smallest areas covering approximately one mile around the city. Several of the other cities, Garden Plain, Goddard and Andale, have approximately three miles around the city.

**PUBLIC SERVICES:** "Zoning area of influence" review potentially provides an early notice to a city that development is planned in an area that the city may currently serve or is likely to serve, and may serve to facilitate the planning for, and the delivery of services where multiple jurisdictions may be involved. Methods other than current ZAOI procedures can be implemented to accomplish the same result.

**CONFORMANCE TO PLANS/POLICIES:** As noted above, the authority for ZAOI review is contained within the UZC, and there is not any statutory requirement that a county has to grant a city zoning review authority in areas where a county has established county zoning.

**RECOMMENDATION:** The staff report outlines the history of and the arguments for and against the ZAOI arrangement. The MAPD see little value to be gained by its elimination, but little harm if it is eliminated. Based upon the information available at the time the staff report was prepared the following options are offered (in no order of preference):

- 1) Do nothing, leave the process unchanged.
- 2) Eliminate ZAOI review in its entirety.

- 3) Retain ZAOI review but: a) substitute the unanimous vote override requirement with a two-thirds supermajority requirement; b) reduce the land area included within a city's ZAOI territory to one mile beyond its city limits, or to the future growth area as shown on the County's adopted comprehensive plan land use map; or c) allow the city ZAOI meeting to occur after MAPC hearing but before BoCC hearing or final approval.

(To pass a motion amending the UZC eight positive votes are required.)

**DALE MILLER**, Planning Staff presented the Staff Report.

**CHAIR NEUGENT** said she has had several questions about ex parte communication that she requested be addressed by legal counsel.

**VANZANDT** noted that because the Commission was an executive body and not a legislative body, technically ex parte communication was not required unless it caused you to form an opinion on a case before hearing the evidence.

**COMMISSIONER GOOLSBY** disclosed ex parte communication.

**MILLER** asked the Commission if they wanted an update on the item from the last hearing or a full presentation for the new Commissioners.

**TODD** reported that he read the Staff Report on the item.

**DOOL** commented that an update was fine with him.

**JOHNSON** asked if the item has gone to the Advance Plans Committee, and if so, what was the recommendation?

**BARBER** reported that the item did go to the Advance Plans Committee but there was no recommendation.

**RAMSEY** commented that at the last hearing the Commission was provided with a sheet of potential action options.

**MILLER** referred to the three options listed under Recommendations in the Staff Report.

**ROBERT PARNACOTT, ASSISTANT COUNTY COUNSELOR, 525 NORTH MAIN, Ste 359** indicated that five (5) cities did not respond to the request for a formal response to the proposal; seven (7) cities responded and said don't change anything; and five (5) they didn't want to change anything, but if a change is made here are items they would be able to compromise on including the supermajority vote requirement and the size of the ZAOI. He said the application is for the elimination of ZOAI; however, the Commission had a range of alternatives they could consider.

**MITCHELL** asked what portion of the area now under the city's jurisdictions were they willing to give up.

**PARNACOTT** said generally what has been discussed was going to the Urban Growth Boundaries proposed under the new Comprehensive Plan.

**DENNIS** said when the Board of County Commissioners started this process they said they wanted to hear from interested parties. He asked the agent if he has gotten any feedback and if the BoCC was amenable to the compromises most of the cities are recommending.

**PARNACOTT** said the BoCC hasn't had that discussion and he believes that will happen at an open meeting after the Planning Commission has made its recommendation. He said the process has been to go through the public hearing at the Planning Commission, get a recommendation from this body that will then be presented to the governing body. He said there will also be an opportunity to speak on the proposal at the County Commission hearing as well. He said there may have been contact between the County Commissioners and the respective cities they represent, but he has not been involved in that.

**DENNIS** asked if he was spinning his wheels or did the Planning Commission have input.

**PARNACOTT** commented that the Planning Commission was a recommending body and State Statute states that after the Planning Commission makes a recommendation to the governing body, they have three (3) options: follow the recommendation of the Planning Commission which takes a simple majority vote; override or modify the Planning Commission recommendation which takes a super majority vote; or the governing body can send the item back to the Planning Commission by a simple majority vote. He said if the County Commission sends the issue back to the Planning Commission for reconsideration and it goes back to the County Commission for a second time, it will require a simple majority of the governing body to take whatever action they deem is appropriate.

**JOHNSON** asked what the current procedure was if a small city recommends denial of an application.

**PARNACOTT** said it would require a unanimous vote of the County Commission to override the small city's Planning Commission recommended denial of an application. He clarified that the case would still be heard by the Planning Commission for a recommendation. He added that if the Planning Commission recommends elimination of the ZAOI, small city representatives would still be able to attend the Planning Commission and County Commission hearings and make comments on an application.

**MILLER STEVENS** asked what happens if the proposed Comprehensive Plan is not adopted; if the Planning Commission recommends going to the Urban Growth Areas recommended in the Plan. How would that work?

**PARNACOTT** replied then it would be the Urban Growth Areas in the current Comprehensive Plan.

**RICHARDSON** requested clarification on how the ZAOI's are currently set.

**PARNACOTT** said the ZAOI's are set by adoption of a map by the County Commission. He said those boundaries are set after review and input between staff and the small cities. He said the Planning Commission then makes a recommendation to the County Commission. He commented that the last update of the map was in 2007 and cities can request that their ZAOI boundaries be reviewed at any time.

**DAILEY** asked if the ZAOI are completely eliminated, can a small city renegotiate an area in the future.

**PARNACOTT** said the UZC is always subject to amendment.

**CHAIR NEUGENT** commented that since this item has been heard by the Commission previously, she was going to defer to legal counsel to see how public comment should be handled.

**VANZANDT** said since this was a continuation of the last hearing, they would request that if you spoke at the last hearing that you not speak again; however, that doesn't preclude anyone else from speaking, they just want to avoid a duplication of what was said previously.

**MARCEY GREGORY, 11 NORTH HOPPER COURT, MAYOR OF GODDARD** commented that she served two (2) years on the Goddard Planning Commission before being elected Mayor. She said she wanted to strongly urge the Commission not to recommend completely eliminating ZAOI's. She mentioned the State imposing regulations on cities and said State Legislators she has spoken with complain about the Federal government imposing regulations on States. She said a basic tenant of State Statutes in Kansas is the idea of home rule, which is neighbors governing neighbors and making decisions about their own communities. She said neighbors will communicate with local Planning Commissioners on proposals. She said as a Mayor and someone who was involved in the planning process she urged the Planning Commission to let them keep that in place. She said she would be open to talking about going to the Urban Growth Areas. She asked the Commission to reach out to the cities who did not write letters to voice their support or opposition. She strongly urged the Commission not to completely do away with the ZAOI because it is valuable to small cities.

**JOHNSON** asked how the speaker suggested the dialogue take place.

**GREGORY** commented that it can be difficult for people in small communities to take time off work to come address the Planning Commission. She said it is important that cases are reviewed by the small city Planning Commissions or governing bodies for valuable input because they need to have some say in the development of their communities.

**JOHNSON** clarified so she is asking Planning Staff to come to the each of the small cities.

**RAMSEY** clarified that Ms. Gregory wanted the small cities to continue to have input and the Planning Commission is giving them that opportunity with this hearing.

**GREGORY** commented that she could have packed the room but her Planning Commissioners couldn't get off work. She explained that many small city officials are volunteers and have day jobs.

**DAILEY** commented that they can still have input at the Planning Commission and County Commission hearings, that they could send City staff to attend the Planning Commission meeting.

**TODD** asked if the people located in Goddard's ZAOI (the unincorporated area of the County) have input on who is elected to the Goddard City Council.

**GREGORY** said no; however, two Planning Commissioners are elected "at large."

**VANZANDT** said technically this is a continuation of a previous public meeting; however, the Commission could vote to open it up for further public comment.

**MOTION:** To open the matter up for discussion and public input.

**GOOLSBY** moved, **TODD** seconded the motion.

**WARREN** said he would vote in favor of the motion but he asked in the interest of time, that the Commission not try to debate each speaker and hold questions to the end.

The **MOTION** carried (11-1). **MITCHELL** – No.

**CHAIR NEUGENT** asked members of the audience to come to the podium but not repeat what was said at the last hearing.

**DIANA BROOKS, COLWICH, KANSAS** she said it was important for the Commission to understand that if the smaller communities send staff to attend the Planning Commission hearing that leaves their offices unmanned which is inconvenient for their citizens. She commented that two of the cities that did not respond have new City Clerks. She said their communities rely on them to provide information on zoning cases. She urged the Planning Commission to recommend denial of this request from the Board of County Commissioners.

**JUSTIN GIVENS, CLEARWATER, KANSAS** reiterated that Clearwater would like the Commission to take no action or make a negative recommendation on this item to the Board of County Commissioners. He said let it go to the Board of County Commissioners with a recommendation from every small city and small City Planning Commission that this is not a good idea. He said the cities are comfortable with the way things are now and that the process is working fine. He said being the statesmen that the County Commissioners are, maybe they will recognize that this is not the best avenue to approach this and that further discussion about adjusting small city growth boundaries should happen at the staff level. He mentioned that Clearwater has a large growth area boundary and still have their own Fire District. He said to take away input on what happens in their Fire District could be harmful to their community. He also mentioned that they provide water to the DeBruce Grain Elevator and that location is not within their growth area. He said they have issues to work through at the staff level concerning the Urban Growth Area Map and said there are more things that go into discussion than just the Comprehensive Plan and the map. He concluded by strongly urging the Planning Commission to make a negative recommendation on the request.

**MILLER STEVENS** clarified that the Fire District currently provides services outside the ZOAI. She asked what kind of contract they had and how it worked. She said they are already providing services outside the ZOAI.

**GIVENS** said if the ZAOI shrinks, they may still have Fire Districts outside the ZAOI. He said the small municipalities themselves should be talked to about municipal services such as water and fire versus just looking at the Comprehensive Plan.

**DAILEY** asked what Sedgwick County Fire District was located near Clearwater and if Clearwater had an agreement with them.

**GIVENS** said Clearwater is in Sedgwick County Fire District #1 and they have an interlocal agreement with them but added that the Clearwater Fire Department is the primary responder to their district.

**DOOL** clarified that DeBruce Grain is primarily looking at the Clearwater volunteer Fire Department for their protection.

**GIVENS** said Clearwater provides water to the elevator.

**DAILEY** clarified that the City chose to supply water to the elevator, they weren't forced to provide it.

**GIVEN** responded yes.

**GOOLSBY** clarified then Clearwater is not in favor of reducing the ZAOI to the Urban Growth Boundaries because of municipal services.

**GIVENS** said that was correct. He said if the ZAOI is going to be reduced, they felt like staff, County Commissioners, City Councils and Planning Staff needed to come together and determine what is in the best interest of each community because each community is different. He said using a map from the Comprehensive Plan is a bit short sighted.

**DENNIS** commented that the Planning Commission will be making a recommendation based on the concerns expressed to them and then the County Commission can then make a decision based on that recommendation.

**RAMSEY** asked staff, aren't cities allowed to renegotiate Urban Growth Area boundaries?

**MILLER** commented that the procedure for modifying the Urban Growth Area Map in the UZC is to following the process that the Commission is going through now. He said cities can request and suggest their own boundaries as part of this process. He said it is then up to the County Commission do adopt whatever they feel is appropriate.

**BARBER** clarified that this is a ZAOI map, not an Urban Growth Area Map although sometimes the terms are used interchangeably. He said some cities are not growing; however, they are still concerned about what is going on at their doorstep and near their community. He said that is a different issue than the urban growth aspiration.

**MILLER** said if the ZAOI's are eliminated then the language would be removed from the UZC so he doesn't know what procedure would be used to reinstate it other than starting over.

**PARNACOTT** said he believes there has been a long and full discussion about the item over a couple of meetings. He offered to answer any questions. He mentioned that different cities have unique characteristics and if the Commission is going to recommend that Urban Growth Areas be used, he suggested that they leave it open to amendment.

**JOHNSON** asked if he were a developer, would it be more restrictive for him to have to go to the small city or directly to the Planning Commission.

**MILLER** briefly explained the current process for various zoning requests both in and out of a city's ZAOI. He said there is an extra step and a unanimous vote requirement for cases that go before small city Planning Commissions.

**JOHNSON** commented so ZAOI's limit developer's property rights and it is more restrictive.

**WARREN** said he was going make a motion for discussion. He said the motion can be amended or changed but it will be a beginning point.

**MOTION:** To retain the process; change boundaries to the Urban Growth Boundaries as laid out in the Comprehensive Plan adopted by the Planning Commission, subject to the City's right to request an adjusted boundary; that the requirement of a unanimous vote be changed to a super majority vote; and that the cities in the affected area would have to respond to a request within 30 days of notification of a zoning application. If the city does not respond then the default position is that it is approved by that community.

**WARREN** moved, **RAMSEY** seconded the motion.

**WARREN** said he has heard that part of the reason for the suggestion to eliminate ZAOI was to speed up the process. He said if it is that important for the small city to have input, they can hold a special Planning Commission meeting. He said the super majority vote could override what a community recommended. And added that a unanimous vote is difficult. He said he thinks it is good that processes are being looked at. He said the Urban Growth Boundary is a starting point and communities can request amendments of that if they feel they have other areas that should be included. He concluded by stating that the reason he is in favor of keeping the current process is he feels it is important for communities to ask the kinds of questions this Planning Commission asks people who submit applications. He said he does not feel it is enough for a representative from the community to come and testify before this body and not be able to engage in the debate and questions and answers about the application.

**RAMSEY** commented that although he was vehemently opposed to this proposal, realistically he understands that there has to be a compromise so he will second the motion.

**CHAIR NEUGENT** asked for clarification purposes, when does the 30-day period started from.

**MILLER** explained the current process when cases that have been filed are divided up among the Planners after a closing date, which is always on a Monday. He said the Planner assigned to a case calls the small City and finds out when their Planning Commission meets. He said the filing date is a known date for staff.

**CHAIR NEUGENT** suggested that the 30 days start from the date the City is notified that a planning application has been filed within their ZAOI.

**WARREN** and **RAMSEY** agreed to amend the motion that the 30 days begins once the City is notified of a zoning application.

**SUBSTITUTE MOTION:** To eliminate the Zoning Areas of Influence (ZAOI) in its entirety.

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

**TODD** said it bothers him that property owners in the unincorporated areas of Sedgwick County can be regulated by City Councils and other appointed boards and committees when they have no voice in electing or appointing the people who serve on those boards, councils or commissions. He said this country has a long history of being opposed to taxation without representation. He said essentially what they have here is regulation without representation which is an issue for him. He said representatives from these boards, councils or commissions can come before the Planning Commission and County Commission to address their appeals and concerns. He said he views this as a private property issue and that repealing it is the appropriate course.

**DENNIS** said he will not support the substitute motion because he believes there is a reason the Planning Commission wants small communities to have input because they are going to have to live with decisions made outside of their community. He concluded by stating that as a member of the Advance Plans Committee he was disappointed that the Committee did not make a recommendation on this issue.

**MITCHELL** said he believes the Planning Commission needs to make decisions and not leave it up to the local community as shown on the map. He said some areas are not even close to cities but this makes it difficult to rezone outside those city boundaries. He said he knows of no other act that requires a unanimous vote in order to overturn the action of a local body so he will not be supporting the original motion.

The **SUBSTITUTE MOTION** failed (7-5). **NEUGENT, DENNIS, GOOLSBY, RAMSEY WARREN, JOHNSON** and **FOSTER** – No.

**DENNIS** said since this is a change to the UZC does the motion need to include something that the City can ask for an exemption to the standard. He said he didn't want to tie the cities to the Urban Growth Area if there is a valid need for an exemption.

**WARREN** said the Cities have the right to amend the Urban Growth Areas.

**BARBER** said the last time the Urban Growth Areas was amended was in May, 2005 so as staff has developed the proposed Comprehensive Plan those areas have adjusted with input from the cities and reflect new growth areas. He said as they move forward the intention is to revisit those on an annual basis. He said there may also be issues independent of each city's Urban Growth Area that are reflected on the ZAOI Map. He said there needs to be a process where the ZAOI Map can be tweaked independent of the Urban Growth Area Map.

**WARREN** asked if the Commission could approve the proposed motion but leave the door open to adjust maps due to unique circumstance surrounding cities.

**MILLER** clarified that he understood that they would start with the Urban Growth Areas but if one of the cities wants different boundaries that could be negotiated. He said the only problem with that is if most of the cities want different growth boundaries, there will be multiple cases.

**BARBER** suggested that there could be a two-fold process which would be an annual update of the Urban Growth Areas and adjustments to the ZAOI as part of that same process so other factors could be considered, not just what is in the Comprehensive Plan for long term growth.

**WARREN** asked how he can make that part of the motion.

**VANZANDT** said he doesn't know exactly how that can be worded.

**WARREN** suggested leaving the motion as it is with the caveat subject to the city's ability to request an expanded boundary for extenuating circumstances.

**BARBER** said the default would be the Urban Growth Areas.

The **ORIGINAL MOTION** was amended to read "subject to the City's right to request an adjusted boundary" with agreement of the second.

**MILLER STEVENS** commented that she thinks the Commission needs to be careful because the Urban Growth Boundaries will change if and when the new the Comprehensive Plan is adopted.

**RAMSEY** suggested Urban Growth Boundaries as adopted by the Planning Commission subject to the city's ability to request an adjusted boundary.

**MILLER STEVENS** said she doesn't want it tied to the Urban Growth Boundary but call it the Urban Area of Influence.

**MILLER** clarified that the motion was to use the boundaries adopted in the most recent Comprehensive Plan.

**DOOL** clarified that if a small city declines an application it still takes a unanimous vote by the Board of County Commissioners to override that.

**RAMSEY** clarified it would take a supermajority, or four (4) out of the five (5) County Commissioners.

**FOSTER** said he thinks they are setting themselves up for a lot of confusion relative to the boundaries and approved Comprehensive Plan, he sees a problem with that; however, in the interest of moving forward, he will support the motion.

**DENNIS** asked that the question be called.

**VANZANDT** said they need a vote to call the question because that might cut someone off who wants further discussion on the motion.

**CHAIR NEUGENT** asked the Commissioners if they wanted to call the question or continue further discussion because she was willing to forego her comments.

The **MOTION** to call the question and end discussion carried (11-1). **TODD** - No.

**FOSTER** said suppose for some unknown reason a City is unable to respond. He said they should still have that time before it is heard by the County Commission to provide their recommendation.

**VANZANDT** said his understanding of the 30 day response time was so an application wouldn't sit. He said a default approval would not preclude a city from coming back and saying that they have changed their mind on a case.

**MILLER** clarified that the 30-day response time starts running from the time Planning Staff notifies the City, probably by e-mail which is traceable. He said basically staff calls the City to find out when their Planning Commission meets and then staff will back up seven (7) days from that date and are supposed to have the Staff Report completed by then. He asked does a response mean the city has scheduled a date for the application to be heard by their Planning Commission or does it mean someone has to give an answer within 30 days of being notified of the application and Planning Staff no longer needs to attend the small city Planning Commission meeting.

**VANZANDT** said staff would go through the normal process and go to the small city Planning Commission meeting.

**MILLER** said the way he understood it is that small city Planning Commission date has to be within 30 days of the City being notified of an application.

**WARREN** acknowledged that was the intent of the motion.

**TODD** asked Mr. Parnacott to what actions the County Commission can take on the Planning Commission's recommendation.

**PARNACOTT** explained that the Planning Commission is making a recommendation to the Board of County Commissioners. He said if the proposed motion passes with at least eight (8) votes, which is what is required to amend the UZC, then the Board of County Commissioners can either adopt the Planning Commission's recommendation by a simple majority vote; override the recommendation by a super majority vote and make any changes they feel are appropriate; or they can send it back to the Planning Commission for further consideration by a simple majority vote.

The **ORIGINAL MOTION** carried (11-1). **DAILEY** – No.

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**NON-PUBLIC HEARING ITEMS**

**11. Other Matters/Adjournment**

- 11-1.** Appointment of MAPC representative (a County appointee) to attend the Quad-County Planning Forum (Reno, Harvey, Sedgwick and Butler Counties): This forum is comprised of county planning commissioners and administrators who meet quarterly to discuss co-ordination of planning issues of mutual interest. Meetings are held at noon on the third Monday in March, June, September and December. Next meeting is at the Eisenhower National Airport on September 21st at 11:45 AM.

**BARBER** explained that due to Commissioner McKay’s departure from the Planning Commission, there was vacancy on the Quad-County Planning Forum for a County appointee. He mentioned that the Forum meets once a quarter. Commissioner Joe Johnson was appointed to the Quad-County Planning Forum.

The Metropolitan Area Planning Commission adjourned at 4:40 p.m.

State of Kansas            )  
Sedgwick County        ) <sup>SS</sup>

I, W. David Barber, Interim 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 \_\_\_\_\_, 2015.

\_\_\_\_\_  
W. David Barber, Interim Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)