

**EXCERPT MINUTES OF THE APRIL 4, 2013 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION HEARING**

Case No.: CON2013-04 - Jubilee Presbyterian Church (Philip D. Elder) (applicant) / Baughman Company, P.A. (Russ Ewy) (agent) request a County Conditional Use to permit a church and cemetery in RR Rural Residential zoning on property described as:

Part of the Southwest Quarter of Section 24, Township 25, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as follows:

Beginning at the Northwest corner of said Southwest Quarter; thence South 0°00'West on an assumed bearing along the West line of said Southwest Quarter 993.30 feet to the North line of the South half of the South half of the North half of the West half of said Southwest Quarter; thence North 89°06'50"East along the North line of said South half of the South half of the North half of the West half of said Southwest Quarter 1315.50 feet to the East line of the West half of said Southwest Quarter; thence North 0°17'23"West along the East line of said West half of said Southwest Quarter 993.62 feet to the North line of said Southwest Quarter; thence South 89°05'50"West along the North line of said Southwest Quarter, 1310.48 feet to the point of beginning, subject to road right of way of record.

AND

The South Half of the South Half of the North Half of the West Half of the Southwest Quarter of Section 24, Township 25 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas.

BACKGROUND: The application area is located 2,100 feet north of East 93rd Street North, on the east side of North 47th Street East (Oliver), and contains 39.4 unplatted RR Rural Residential ("RR") zoned acres. The property has approximately 1,330 feet of frontage along North 47th Street East. Currently, the application area does not have frontage on any other roads except North 47th Street East. The application area is to be divided into four nearly equal tracts (nine plus acres in size). See the attached site plan for the proposed layout and development of the property. The northwestern tract has an existing structure located in the northwest corner of the tract that is planned to be used as a temporary church. A parking lot (with 30 spaces shown) is proposed to be located just south of the temporary church building. South of the parking lot a second structure (approximately 7,200 square feet shown) is proposed to be built that is to become the permanent church. A cemetery (approximately 45,000 square feet shown) is proposed to be located east and southeast of the existing and proposed structures. The other three remaining tracts, located to the east, southeast and south of the tract with the proposed church and cemetery are proposed to be future residential sites. Three access points to North 47th Street East are shown on the site plan: one at the southern end of the site; one in the approximate middle of the site and one to the existing building located on the northern end of the site. At the location of the middle access point, a thirty-foot wide access easement is depicted on the site plan. The access easement will provide access to the two proposed tracts located in the eastern-half of the subject property.

In the RR zoning district the minimum building setbacks are as follows: front 30 feet; interior side 20 feet and rear 25 feet. With respect to the front building setback, the applicant is advised that Unified Zoning Code Section III-E.1(3), titled as "Setbacks from major roadways," requires structures to be located 85 feet from the centerline of a "section line road." A plat of the property, noted below in the case history section, has already been submitted and follows the tracts show in the site plan. The plat

divides the property into four lots of nearly equal size with a 100-foot wide drainage reserve running from north to south in the easternmost two lots.

All property surrounding the application area is zoned RR. All of the surrounding properties are used for large lot residential or agricultural purposes. The overall character of the area surrounding the application area is overwhelmingly rural. The City of Kechi city limits are currently located one mile west of the application area.

Among the concerns created by a request for a Conditional Use to permit a church and/or a cemetery in a rural area is the long-term viability of the church and the church's ability to provide for the long term maintenance of a cemetery. Financing by traditional lending institutions can sometimes be problematic for small congregations. If the church fails, the long-term maintenance responsibility of a cemetery can potentially then fall upon a governmental entity if no other private entity can be found to accept management and maintenance responsibilities. Other potential issues that have to be accounted for are building and fire code requirements for buildings used for public assembly, such as if the building will need to be sprinkled, and if so, can the rural water district provide the necessary volume of water at the needed pressure to operate the fire suppression system, or if an on-site pressurized water storage system will be required. On-site sanitary sewer disposal requirements for public assembly will also need to be addressed. Zoning, sanitation and building code requirements will be addressed either at the time of Conditional Use consideration, and if approved, at the time of platting or building permit review.

CASE HISTORY: The site's current RR zoning was probably applied in 1985 when County-wide zoning was adopted. The Jubilee Presbyterian Church Addition, SUB2013-00014, has been filed and is scheduled to be heard by the Subdivision Committee on March 28, 2013, and the Metropolitan Area Planning Commission on April 4, 2013.

ADJACENT ZONING AND LAND USE:

NORTH: RR; large-lot residential, agriculture
SOUTH: RR; large-lot residential
EAST: RR; agriculture
WEST: RR; large-lot residential

PUBLIC SERVICES: The segment of North 47th Street East fronting the application area has 30 feet of half-street right-of-way. An additional 30 feet of right-of-way may be requested at the time of platting to comply with adopted right-of-way widths. The property is located in the service area of Sedgwick County Rural Water District No. 2. The plat indicates a two-inch water line is located on the east side of Oliver, and also indicates the existing building on the property is served by the rural water district. The site does not appear to have access to public sanitary sewer service; therefore, an on-site system, reviewed by the Metropolitan Area Building and Construction Department, will be needed to provide wastewater treatment. Sedgwick County Fire Station 32, located near the southeast corner of I-135 and East 77th Street North, is the closest County fire station to the site.

CONFORMANCE TO PLANS/POLICIES: The Wichita and Small Cities 2030 Urban Growth Areas map depicts this site as a "rural" area, and is located outside of any designated urban growth area or zoning area of influence territory. The "rural" category encompasses land located outside of the 2030 urban growth areas for Wichita and the small cities. This land use category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County, and predominately larger lot residential exurban subdivisions with provisions for individual, or community water and sewer services.

RECOMMENDATION: Based upon information available at the time the staff report was prepared, staff recommends the request be approved subject to the following conditions:

- A. In addition to the uses permitted by right with the property's base zoning, a "church or place of worship," a "cemetery" and accessory uses commonly associated with such uses, such as parking or sheds for mowing equipment or church vehicles, are permitted by the Conditional Use. The site shall be developed, maintained and operated in substantial compliance with the approved site plan, and in compliance with all other applicable local, state and federal codes, regulations or permitting requirements.
- B. All burial plots shall be located outside of building setbacks, easements or rights-of-way.
- C. The property shall be platted within one year of final approval.
- D. Signage shall be per the County Sign Code.
- E. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Director of the Metropolitan Area Building and Construction Department, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All property surrounding the application area is zoned RR. All of the surrounding properties are used for large lot residential or agricultural purposes. The character of the area is rural with the feeling that one is in the "country."
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR which primarily restricts the use of the property to agriculture, large-lot single-family residential uses and a few other civic uses customarily found in residential areas such as parks or golf courses. There are numerous other large lot tracts in the immediate area and the property could most likely attract interest for uses allowed by the site's current zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: A church will typically generate more traffic than a single-family residence on the days when services or events are held at the church. However, traffic impacts should be not be any greater at this location than at other church site located throughout any other residential areas within Sedgwick County or the County's cities. Anticipated impacts are, or can be, addressed with the recommended conditions of approval, during platting or with existing fire, sanitation, building or zoning codes.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request will provide an additional place of worship to this area of the County. Denial presumably would be an economic hardship on the seller or new owner/applicant.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita and Small Cities 2030 Urban Growth Areas map depicts this site as a "rural" area, and is located outside of any designated urban growth area or zoning area of influence territory. The "rural" category encompasses land located outside of the 2030 urban growth areas for Wichita and the small cities. This land use category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses

commonly found in Sedgwick County, and predominately larger lot residential exurban subdivisions with provisions for individual, or community water and sewer services.

6. Impact of the proposed development on community facilities: Anticipated impacts are accounted for by existing community facilities or by improvements that will be required at the time of platting or obtaining a building permit.

DALE MILLER, Planning Staff presented the Staff Report.

FOSTER referenced two letters from neighbors and asked where the residences were located on the aerial.

MILLER said he could pull up the aerial map but suggested asking the applicant where the residences were located.

G. SHERMAN asked if the application was approved and in the future the applicant wants to expand the cemetery onto another parcel, what would they have to do.

MILLER indicated they would have to submit an adjustment or an amendment to revise the site plan.

G. SHERMAN referenced staff's concerns expressed in the Staff Report regarding zoning, sanitation and building code requirements and that they would be addressed at the time of platting. He said since the Planning Commission just approved the plat; he asked if those items would be covered when the applicant applies for a building permit.

MILLER mentioned that the applicant would need to go through the County Metropolitan Area Building and Construction Department (MABCD) if they are asking for onsite sanitary sewer.

J. JOHNSON asked what were the requirements for access to the cemetery.

MILLER asked did he mean UZC requirements or what the applicant is proposing. He suggested that the agent address the issue.

J. JOHNSON asked if the cemetery could be used before the church is built.

MILLER said the way the Staff Report is written nothing prevents development of the cemetery prior to when the church is built.

RUSS EWY, BAUGHMAN COMPANY, P.A., AGENT FOR THE APPLICANT said they are agreement with the staff comments and conditions listed in the Staff Report. He said this is a private cemetery for the benefit of members of the Jubilee Presbyterian Church. He said access to the cemetery would not be from Oliver Street but through the church development itself. He mentioned the access easement to the back two east lots. He said the applicant would not ask for additional access to the cemetery, which is the one acre in the middle of 40 acres. He said there is an existing curb cut to the building and they will link that up and share that access to the cemetery. He said they are willing to work with staff to develop conditions relating to access to the cemetery itself. He said to address staff concerns regarding long-term maintenance of the cemetery itself, they suggest that it be treated no different than similar developments. He said they would be willing to offer the County a restrictive covenant that ties maintenance responsibilities of the cemetery to the owner of lot 1. He said there were concerns about what would happen if the church falls under financial hardship. He said the covenant will transfer maintenance responsibility to whoever owns lot 1. He said the covenant would let the County take over

responsibility for drainage ponds and maintenance and assess those costs back to the property owner. He said he would stand for questions.

MCKAY asked about the easement that stopped in the middle of the floodway/ drainage easement.

CHRIS ROSE, BAUGHMAN COMPANY said the reserve was extended past the floodway during the platting process. He said although it is reflected on the site plan as an access easement, it has been turned into a reserve accessible only from lots 2, 3 and 4.

TROY WEISSBECK, 9745 NORTH OLIVER said he lives in the two-story red, brick home directly across from the proposed church and cemetery. He said the surrounding area is all rural and he understands from the Staff Report that rural areas are the most restrictive. He referenced the Staff Report recommendation based on the “findings” listed as items 1-6 which he believed were more against the application than for it. He said it is difficult as a neighbor to be up at the podium; that he knew the church Pastor who lives right behind him and he thinks is a fantastic guy. He said he likes to be neighborly. He commented that the people who owned the parcel previously built the building and were going to build a house, but never did. He said he believes they ran a business out of the building. He said he does not have so much trouble with the church because he believes they hold services now at the building and as long as it looks nice and is kept nice, he is fine with that. He said he does not like the cemetery because it is a long-term deal. He referenced the comment that only people who go to church will be buried there, but he said anyone can be buried anywhere. He asked how is that regulated. He said to his liking, the cemetery would be behind everything, further to the east. He said he doesn't want his home to view the cemetery. He said he thinks the Commissioners can understand that and wouldn't want that view either. He concluded by saying that he lives right next door and is directly affected by this application. He said he built his home at this location because he grew up in Collier, Kansas, and he likes the county.

FOSTER said since the use abuts residential, it is usually appropriate to ask for landscape screening. He asked if that would help remediate the situation for Mr. Weissbeck.

WEISSBECK replied yes and added that if the cemetery was moved where he wouldn't have to notice it that would be great. He said if the cemetery was screened and back behind the building that would be a step in the right direction.

PHILLIP ELDER, 3501 EAST 101ST STREET, NORTH said he was the Treasurer of the church and knows Mr. Weissbeck. He said they want to be good neighbors and will do what they can to insure that they are good neighbors. He mentioned landscape screening along Oliver Street to insure that the cemetery is pretty much hidden from the road. He invited Mr. Weissbeck to come over and participate in selecting the trees for landscaping.

JEFF HUDSON, 9949 NORTH OLIVER said he lives just north of Mr. Weissbeck next to the open field. He said his house was on the west side of the road. He said he has lived there 20 years and wasn't too concerned about the church but did have some concern about the cemetery and how it might affect property taxes and homes values in the area. He said he wouldn't like to see the graveyard from the road. He said the neighbors were totally against it and they understood it was hard to get rural residential zoning changed. He said he wanted to come to the meeting and see how it works. He repeated that he has nothing against having a church in the area, but he is concerned about grave sites and a parking lot and what that will do to home values.

FOSTER asked Mr. Hudson if he knew the neighbor at 5519 East 93rd Street, Sue Stevens.

HUDSON replied that was his mother in law's place and that he had been married to her daughter. He said the family has lived in the area for over 100 years. He said she is concerned about this request and is worried about a graveyard being an eyesore. He said since he is a Christian man, it might be the Lord wants a church there.

RUSS EWY, BAUGHMAN COMPANY, P.A., AGENT FOR THE APPLICANT referenced the rural character of the area and mentioned that he grew up in Halstead, Kansas, which is out in the country. He said there were two rural churches in that area similar to the proposal that had little impact on the surrounding property owners. He said he feels it is the same in this case, especially because of the acreage around the location and the location of the cemetery within that acreage. He mentioned that one of the letters (from someone living to the north of the property) talked about not wanting the cemetery next to them. He said they believe they have located the cemetery in the safest area possible, and not directly along Oliver Street or near someone's home site. He said as far as site design, they talked about landscaping, including using the existing hedge row on the east side of Oliver Street. He said in lieu of landscaping there is a 300-400 hundred foot setback on the cemetery. He said as far as the site plan, he believes they did a pretty respectable job to try to locate the cemetery to avert impacting existing surrounding residential land uses. He said the site plan will match the final plat, and may have some slit modifications depending on what happens with the plat. He said Mr. Elder was also present so if the Commission has specifics on what they would like to see as far as landscaping and other site design issues, they may ask him what the church is willing to do.

G. SHERMAN mentioned that there were no dimensions on the site plan drawing.

EWY said the lots are 630 feet. He said they can tie down a dimension for the one- acre cemetery plot and add to the revised site plan.

DENNIS clarified that the covenant dealing with future maintenance of the cemetery would be added as a condition at today's meeting.

EWY said they would be willing to entertain that idea with staff. He said they had previously talked about adding the cemetery as a reserve but in lieu of that option, they would rather do a covenant that ties maintenance responsibility for the cemetery to the owner of lot 1.

DENNIS asked for clarification on the landscape screening.

EWY said the applicant would be willing to put together a landscape plan; however, he did not know exactly what that would entail.

DENNIS asked about specific designated setbacks for the west and north sides of the cemetery.

EWY said they will affix dimensions to the location of the cemetery on the site plan. He said the cemetery will be 50 feet from the east property line and the reserve; however, he can't tell exactly how many hundred feet it will be from Oliver Street or the north property line but they will respect discussion at this Commission meeting and tie that down specifically for staff.

MOTION: To approve subject to staff recommendation and addition of the covenant on future maintenance, additional landscape screening and revised site plan that matched the plat with designated setbacks around the cemetery.

J. JOHNSON moved, **WARREN** seconded the motion, and it carried (11-0).

DENNIS asked can't staff pin down the setbacks in more detail.

MILLER said staff will take the direction of the Commission. In addition, he asked what the Commission was looking for as far as landscaping -- a tree every 30 or 50 feet.

DENNIS clarified that a landscape plan will be submitted to Planning Staff for approval.