

DRAFT

**EXCERPT MINUTES OF THE SEPTEMBER 17, 2015 WICHITA-SEDGWICK
COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING**

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 ZOI; 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 Statue 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 ZOAI 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 (5-7). **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.