

**EXCERPT MINUTES OF JULY 7, 2016 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION MEETING**

**Case No.: ZON2016-00023** - Wayne and Donna Wulf (owers/applicants) request a County zone change from RR Rural Residential to SF-20 Single-family Residential on property described as:

The south half of the east half of the Southwest Quarter of Section 35, Township 28 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas.

**BACKGROUND:** The applicant requests a zone change from RR Rural Residential (RR) to SF-20 Single-family Residential (SF-20) on 40 acres. The application area is concurrently platting as the Tiffani Breeze addition with 18 lots and a reserve ranging in size from 2.9 acres to 1.5 acres on modified septic systems. RR zoning requires a 2-acre minimum lot size. The site is located on the north side of East 71<sup>st</sup> Street South and is ¼ mile east of South 127<sup>th</sup> Street East. The site is not within a small city urban growth area but is within Rural Water District #3.

All property surrounding the site is zoned RR. Property due north, south and east of the site is undeveloped and used for agriculture. Further east is the Downwind Estates airfield and associated residential subdivision. West of the site are RR zoned residential lots approximately 10 acres in size. Further west and northwest are residential lots as small as 0.63 acres in the RR zoned Fairway Meadows Addition with a community sewer system.

**CASE HISTORY:** The site is in the platting process, MAPC will hear the plat on July 7, 2016.

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	Agriculture, large-lot single-family residential development
SOUTH:	RR	Agriculture
EAST:	RR	Agriculture, large-lot single-family residential development, private airfield
WEST:	RR	Large-lot single-family residential development

**PUBLIC SERVICES:** East 71<sup>st</sup> Street South is an unpaved, two-lane section-line road maintained by the township. The proposed plat will give this section of 71<sup>st</sup> Street South a 30-foot half-width right-of-way and a 30-foot water line easement. By keeping the lot count below 20, the applicant is not required to make paving improvements to 71<sup>st</sup> Street South. The site will be provided water by Rural Water District #3, on-site sewer (modified septic systems) are proposed based on lot sizes below two acres.

**CONFORMANCE TO PLANS/POLICIES:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as “rural” and not within any small city growth areas. The “rural” category encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Such development should occur in accordance with the *Urban Fringe Development Standards for Wichita and Sedgwick County*.

**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:** All property surrounding the site is zoned RR. Property due north, south and east of the site is undeveloped and used for agriculture. Further east is the Downwind Estates airfield and associated residential subdivision. West of the site are RR zoned residential lots approximately 10 acres in size. Further west and northwest are residential lots as small as 0.63 acres in the RR zoned Fairway Meadows Addition with a community sewer system.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned RR and could be developed with 2-acre minimum residential lots.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested SF-20 zoning will allow half-acre lots. The increased number of potential lots will impact nearby property with increased traffic.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as “rural” and not within any small city growth areas. The “rural” category encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Such development should occur in accordance with the *Urban Fringe Development Standards for Wichita and Sedgwick County*.
- (5) **Impact of the proposed development on community facilities:** 71<sup>st</sup> Street South is unpaved at this location. MAPC will hear the plat for this development concurrently with the zone change. The increase in residential density will slightly increase demand on community facilities, infrastructure and services.

**JESS MCNEELY**, Planning Staff presented the Staff Report.

**GOOLSBY** asked about the possibility of the Commission requiring an overlay or a No Protest Petition.

**JUSTIN WAGGONER, ASSISTANT COUNTY COUNSELOR** clarified that Commissioner Goolsby was talking about adding a condition to the plat that the applicant would not protest if there was a road paving petition. He said the Planning Commission could probably do that; however, being a lawyer he wanted to be cautious and look into it more.

**CHAD ABBOTT, ABBOTT LAND SURVEYING, AGENT FOR THE APPLICANT** said the plat for Downwind Estates, 2<sup>nd</sup> Addition is approved but not shown on the zoning map. He said that parcel will be approved and recorded once construction of 139<sup>th</sup> Street east and 73<sup>rd</sup> Street south is completed. He said the reason he mentions it is the zone change to SF-20 on that parcel was approved. He asked for clarification that one of the requirements for the requested zone change approval was requiring a No Protest Petition for future paving from his client.

**CHAIR NEUGENT** commented that the decision hasn't been made but it has been brought up.

**ABBOTT** commented that he has had zero opportunity to speak to his client about that issue since this is the first time it has been brought up so he is unprepared to comment on that suggestion.

**GOOLSBY** asked if the agent would like the Planning Commission to defer the item.

**ABBOTT** said they do not want a deferral. He said he would stand for questions.

**CHAIR NEUGENT** asked if the applicant would agree to an overlay or No Protest Petition if that ends up being part of the Commission's recommendation.

**ABBOTT** said probably, but added that without having an opportunity to discuss it with his client, he can't say for sure. He said if they don't agree with that contingency, the zoning request would die.

**KNEBEL** mentioned that the proposed zoning change does go to the Board of County Commission for final determination.

**RICHARDSON** asked Mr. Weber to respond to the idea of requiring an overlay or No Protest Petition and if that has been done in the past in the County. He said he was concerned that the Commission was setting another precedent without fully discussing it.

**JIM WEBER, DEPUTY DIRECTOR, COUNTY PUBLIC WORKS** said he cannot think of a time where there has been a No Protest Petition in the County. He said he agrees with County Counsel that the idea would require some research to determine if that was even a possibility. He said many City and County statutes don't match up on paving issues. He mentioned for the record that staff did not come to this meeting asking the Planning Commission to do that. He said if that is a solution the Commission would like to pursue, Legal Counsel and other County staff could research that possibility. He said he is no expert but he is thinking that the No Protest Petition is more related to Subdivision Regulations and issues than zoning.

**RICHARDSON** said this goes back to the previous discussion on the platting item as to whether this is fair. He said he would come down on the side of deferring the request until it is determined if this makes any sense.

**DOOL** said he was wondering if staff could shed any light on the reasoning behind why the statute was written this way.

**WEBER** reiterated that historically there has been a problem with urban scale development just outside areas where you can receive municipal services with the idea being that they you can avoid special assessments for sewer, water, paving, etc. He commented that there are 5-10 acre lots surrounding this parcel which is more typical with on-site sewer and water, which is what this subdivision will do. He said in reviewing the county road system it was determined that an arterial road would have to be paved after there were about 200 vehicles on it per day, He said data has revealed that when traffic gets to 200 vehicles, you need to think about paving so over

the years that is where the line has drawn itself. He said the average is 10 trips per day, per household. He said this is an underfunded Township road and when you put that much traffic on it then it becomes a problem that comes to the County. He said that means someone has to pave the road. He said the goal was try to limit themselves and establish triggers when the issue needs to be resolved. He said since the financial downturns, not much has been going on in the way of development so paving hasn't been an issue.

**TODD** asked for information about the vacation of 71s Street. He also asked if the Commission approves the No Protest Petition, is that something the County Commission can reverse.

**WEBER** briefly reviewed vacation of 71<sup>st</sup> Street, which he said will occur when the plat is filed, the proposed by-pass route, Downwind Estates and Cook Airfield.

**WAGGONER** suggested if the Commission wanted to include the No Protest Petition it would need to be included in the zone change and the plat. He said the zone change will go before the County Commission for final determination.

**ELLISON** said he agreed that the Commission needs to include a stipulation about a No Protest Petition.

**GOOLSBY** asked staff how a No Protest Petition is handled by the City.

**KNEBEL** commented that when a No Protest Petition has been done in the past (adding that typically this is done on commercial property) language is added that a No Protest Petition is required for the paving of -- and name the street.

**MOTION:** To approve subject to staff recommendation and the requirement of a No Protest Petition for the paving of 71<sup>st</sup> Street South.

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

**FOSTER** asked legal how the Commission ties this back to the Subdivision motion.

**WAGGONER** said he misspoke and said since the plat is already approved this would be a separate document related to the zone change.

**RICHARDSON** asked for clarification on what gets to be protested. He asked is it a lot, is it so many square feet from the arterial or what? He said there are a lot of uncertainties here and who is going to agree to a petition when they don't know what it is.

**WAGGONER** said he believed they would refer to the County's Charter Resolution for the type of petition and then geographically define the boundaries of the location.

**WEBER** said he does not know the answer to that one. He said the agent asked the question how close does a property need to be to be dragged into the petition.

**RICHARDSON** said the City has a specific formula on how paving petitions are handled. He asked as far as the County is concerned, who gets dragged into paving and how much do they have to pay for it.

**WEBER** said he was going to suggest that the Planning Commission not require a No Protest Petition. He said staff just doesn't know enough about that process and added that the developer has done everything that they are supposed to do for this zone change request. He said this issue is complex and if the Commission tries to deal with it today, staff will probably need to come back to the Commission again for further discussion in addition to discussing the issue with the County Commission when they review the zoning request. He said this is an important issue and he does not know if this is the best way to handle it.

**RAMSEY** said he completely and wholeheartedly agrees with Mr. Weber. He said the Planning Commission is trying to solve a problem that is not there yet.

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

**RAMSEY** moved, **TODD** seconded the motion, and it carried (10-1). **ELLISON**  
– No. (10-1)

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