

**EXCERPT MINUTES OF APRIL 20, 2017 WICHITA-SEDGWICK COUNTY METROPOLITAN
AREA PLANNING COMMISSION MEETING**

Case No. CON2017-00012 – County Conditional Use for a cemetery in a SF-20 Single Family Residential District for the property generally located on the south side of W. 69th St. N., and East of N. Meridian Street (2401 W. 69th St N) on property described as:

A tract of land located in the Northeast corner (NE/c) of the Northwest Quarter (NW/4) of Section 7, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as beginning at the NE/c of said NW/4; thence South a distance of 1244.58 feet along the West line of said NW/4; thence West a distance of 700 feet; thence North a distance of 1244.58 feet to the North line of said NW/4; thence East a distance of 700 feet along the North line of said NW/4 to the point of beginning.

BACKGROUND: The applicant is requesting a Conditional Use in a SF-20 Single-Family Residential District (SF-20) to allow a cemetery on a 20-acre site on the south side of West 69th Street North, approximately 1,600 feet east of North Meridian Avenue.

The Unified Zoning Code (“UZC”) allows a cemetery to be considered as a Conditional Use, and defines a cemetery as *“land used or intended to be used for burial of the dead, whether human or animal, including a mausoleum or columbarium. A funeral home may be included as an Accessory Use to a cemetery.”*

The applicant explains that the cemetery would be developed in four phases, with each phase taking approximately 25 years to reach capacity. The first phase would be on the south side of the 20-acre site. Farming would continue on other areas of the property until future phases are implemented. Please see the attached letter from the applicant with additional details about the cemetery.

A concept site plan submitted with the Conditional Use indicates the location of access from West 69th Street North, a general phasing plan and areas designated for future parking and future buildings. A more detailed site plan is necessary to meet the site plan guidelines of the Conditional Use application. Development of the property with buildings and parking will require platting.

Fencing would be provided for the cemetery with each phase of operation.

This Conditional Use for a cemetery would result in a permanent use of the land with no opportunity to transition or redevelop to another land use category based on future market conditions or demands.

The property is in unincorporated Sedgwick County, and the location abuts the city limits of the City of Valley Center on the north and east. The Community Development Director of the City of Valley Center will attend the MAPC public hearing, and provide any comments from that City.

Also, it should be noted that the sign ordinance would limit a monument sign to 8-square feet for the cemetery. The Planning Commission may authorize an increase in sign area to 32 square feet with the Conditional Use application.

There are single family homes north of the property on West 69th Street North, and large lot single family homes east of the site along Interurban Road. West and south of the cemetery site is agricultural land owned by the applicant. Farther south of the site is the Little Arkansas River and an area of single-family homes.

CASE HISTORY: The property is unplatted, the site is presently being used for agricultural purposes.

ADJACENT ZONING AND LAND USE:

NORTH: RR-1- Single-family residences/City of Valley Center
SOUTH: SF-20 vacant/Little Arkansas River, single-family residences
EAST: RR-1 Single-family residences/City of Valley Center
WEST: SF-20 vacant/agricultural.

PUBLIC SERVICES: Access to the site will be from West 69th Street North, a designated two lane arterial road. The proposed cemetery will not have significant demand for public services.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Urban Growth Area of the City of Valley Center. The Future Land Use Plan of the Comprehensive Development Plan of City of Valley Center designates the site for agricultural uses. The plan also includes a statement that future residential growth will occur to the north and northeast portions of Valley Center due to better accessibility of sewer and water.

Staff advised the City of Valley Center of the application on March 21, 2017.

RECOMMENDATION: Based upon information available prior to the public hearing, Staff recommends that the Conditional Use request for a cemetery be **APPROVED**, subject to the following conditions:

1. The cemetery shall be operated as described in the applicant's narrative. A revised, scaled and accurate site plan shall be submitted that meets the Conditional Use site plan guidelines for dimensions for lots, buildings, driveways, and parking areas. A parking study shall be submitted as required by the UZC to justify the number of parking spaces for the proposed cemetery.
2. The applicant shall comply with all applicable provisions of Kansas State Statutes and Administrative Regulations.
3. The applicant shall obtain all applicable state and local inspections, permits and licenses.
4. The Conditional Use approval shall include a non-illuminated monument sign of 32 square feet.
5. 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:** There are single family homes north of the property on West 69th Street North, and large lot single family homes east of the site along Interurban Road. West and south of the cemetery site is agricultural land owned by the applicant. Farther south of the site is the Little Arkansas River and an area of single-family homes.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is

zoned SF-20, and the property could be developed with single family homes with the existing zoning, or continue with the existing agricultural uses. A cemetery can be considered with a Conditional Use application in a SF-20 zoning district.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed cemetery should have no adverse impact on nearby properties. The cemetery would be a low traffic volume use and should not generate any external factors that would be objectionable to adjoining property owners.
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 within the Urban Growth Area of the City of Valley Center. The Future Land Use Plan of the Comprehensive Development Plan of City of Valley Center designates the site for agricultural uses. The Plan also includes a statement that future residential growth will occur to the north and northeast portions of Valley Center due to better accessibility of sewer and water.
5. **Impact of the proposed development on community facilities:** The cemetery should not have any negative impact on community facilities due to its low traffic generation and minimal demand for services.

DAVE CLEMENTS, PLANNING STAFF presents staff report and would like to add an additional condition, a dedication of a 60-foot half-street right of way dedicated on north side of the property to allow future improvements on 69th street.

RICHARDSON asked if this includes an approval of a funeral home.

CLEMENTS responded that it is the definition in the zoning code and added to inform the Planning Commission of the definition. He adds that it is not necessarily approving a funeral home unless showing on the revised plan.

RICHARDSON commented that a cemetery and funeral home are two separate things. He asked if the intent is to use the whole area for parking and if that is why a parking study is needed assuming that is for traffic control.

CLEMENTS said the zoning code says it requires a parking study and would be asking the applicant for one based on demand and history of the cemetery. He adds that the cemetery parking will be on the north side of the parcel and if funerals take place in phase one attendees will be able to drive and park. A site plan is needed to show that parking and a turnaround is provided for the locations further south.

RICHARDSON asked if the phasing plan is part of the approval process.

CLEMENTS said that would be part of the conditional use site plan.

RICHARDSON said the applicant is talking about a natural cemetery and the commission is approving the use for a cemetery. He assumes that there are State regulations and a license is required or other government regulations.

CLEMENTS responds that Assistant County Counselor would provide that information.

WAGGONER said there are state requirements for the registering of cemeteries. There are a handful of different types of Cemetery Corporation or entities; however, there is a process. He states he was not able to find any statutes or regulations that prohibit the practice of natural burials; the state has not addressed it in any way. Adding that other cemeteries in the state permit it with no prohibition against it.

RICHARDSON asked if that could take place in any existing cemetery unless the regulations of that cemetery prohibited.

WAGGONER responded, yes along as it is in a cemetery.

RICHARDSON asked if the County Health Department gets involved concerning the natural burial.

CLEMENTS responded no.

RICHARDSON said his concern is the proximity of the River and would like to know what is the tablewater.

CLEMENTS said the County Environmental Office indicated that the area is characterized by clay and ground water is 15 to 18 feet below the surface.

RICHARDSON asked if the County Environmental Office had any concerns.

CLEMENTS said they would not comment of the propriety of natural burials and just provided the facts.

DAILEY asked if the driveway needs a turnaround close to where the burial takes place to allow parking and if there are fire restrictions.

CLEMENTS said this would be a private drive and the subdivision regulations would not be applicable to it; however, he would work to see if there is sufficient access, a turn around and parking.

DOOL asked what the definition of a natural burial is.

WAGGONER said he does not know if there is a statutory definition of natural burial and that there is information in some materials submitted by the applicant that mentions it is not typically in a casket. The natural burial would be an area where there would be no embalming, no vaults, no tombstones, and no caskets. He has not heard of any requirements in depth. He is not sure if that is what the applicant is proposing and believes the applicant could address it. He adds that there is no legal definition and information is from the backup materials.

RICHARDSON asked if it would require platting.

CLEMENTS responded that it would be a requirement when there is a building application for building of the parking and noted in the staff report.

CHAIR FOSTER asked if the plat should be part of the conditions.

CLEMENTS said it could be added to the conditions focusing on the platting requirements.

CHAIR FOSTER asked which property are the trees on the east side located on.

CLEMENTS said the tree line is on the applicant's property.

CHAIR FOSTER suggests that a landscape plan be required to address the transition especially on the north and east due to the potential for residential.

DAILEY noted that it would be appropriate to request a landscape plan.

CLEMENTS said it could be added to condition number one.

HARTMAN asked if there is a power line running through the property.

CLEMENTS responded that he does not believe so.

DAILEY said he lives in the area but out of the 1,000 feet and there is a power pole, a pressurized gas line and crude oil pipelines.

HUSSAM MADI, 2525 QUINCY CIRCLE; WICHITA KANSAS, said the gas lines are outside of the property on the west side. The burial does not have at max or sometimes zero funerals with no plans to have a funeral home on site. Concern for landscaping or parking they will make sure there is enough parking for people paying respects and for family members anywhere from 10-15 cars. He states that burial does not go past 6 feet, which is nowhere near the tablewater. Regarding the natural burial, he said there are several Wichita cemeteries going natural that do not require casket or vault. The applicant will also follow the State of Kansas regulations for cemeteries. He adds that a plan will be submitted showing what will go in the property. He said it would take about 25 years to fill in one lot in one of the phases. A Buffer zone to stay away from the power lines for the safety of the members that go out there.

DOOL asked in natural burial how many feet is the body buried with no casket or vault.

MADI responded 6 feet.

CHAIR FOSTER commented that his understanding of a natural burial a casket could be involved as long as it is biodegradable. He adds that the information was obtained from the website provided by the applicant.

MADI said it could be a wooden casket, or some sort.

HARTMAN asked why the four different phases and why would the first one be started at the far end of the property.

MADI said to stay away from traffic from the main street but no specific reason.

HARTMAN asked why four separate phases.

MADI responded for no other reason; however, they would like to get approval for all four at one time.

DAILEY asked where will the fence go and if the entrance would be gated.

MADI said the first phase would be fenced or wherever there are gravesites and would be the south and east side of the phase.

DAILEY said it would be need to be all the way around and asked if it is gated or locked. How are people kept from coming in or out.

MADI said if it were, a requirement the whole area would be fenced with a locked gate..

MCKAY does not see it necessary to fence the north side since the applicant is the owner, however on the other sides by phase and asked if that is the intent.

MADI responded, yes and it would at least keep people away from the gravesites.

MCKAY asked if the four sides of phase one would be gated and is just asking for clarification.

MADI said if it were a concern, they would fence and gate it.

CHAIR FOSTER asked if the applicant is fencing to mark boundaries.

MADI responded, yes.

CHAIR FOSTER asked how they would keep track of where burials go.

MADI stated that it would be platted and each grave would be marked with name and number. They would also keep records of burials that happen.

CHAIR FOSTER said that there would be some sort of ground level surface recognition, a plaque.

MADI said there would be plaques on every grave where somebody is buried in. i.e. name, date, day of birth.

DAILEY asked if it is grass over.

MADI said a burial committee member who is present would be able to answer those questions.

NAZIR JESRI 3617 N. RUSHWOOD COURT; WICHITA, KANSAS, said it can go either way gravel or grass depending on the family.

DAILEY asked if the grass would be maintained

JESRI said that it would be maintained by the Islamic Society of Wichita.

DAILEY asked if the maintenance building would be for storage only.

MADI responded, yes.

DAILEY said that the building would not be used as an office building to store records.

MADI responded, yes.

RYAN SHRACK, COMMUNITY DEVELOPMENT DIRECTOR, CITY OF VALLEY CENTER, 121 S. MERIDIAN VALLEY CENTER, KS said he shared the staff report with members of the City Council and Planning Commission for the City of Valley Center and he has received no written comments. He wanted City to be aware of the project and there are no public comments from Valley Center at this time.

BOB ROGERS 1527 W. 69 STREET NORTH, WICHITA, KS said he does not want a cemetery close to him. There are high lines going through there and wonders if it is allowed to bury under there. He comments that a big gas line runs through the property and is concerned with burying around gas lines. He is curious on those items.

HARTMAN asked Mr. Rogers to point where he lives on the aerial map.

ROGERS points on an aerial map where his property is and adds that he has talked to neighbors who disagree on the cemetery but forgot about the meeting

MADI said the gas line is outside of property and concerning the power lines the applicant is willing to accommodate and give easement to the power lines.

RICHARDSON commented that Westar already has an easement across the property and applicant would need to coordinate that with Westar.

DAILEY asked where the gas lines are.

MADI said he understood from the property owner that it is outside of the 20 acre property. He said they had originally looked at a different location for the 20 acres but gas lines were an issue and ended up moving to the current planned 20 acres.

DAILEY asked if applicant is not confusing gas with crude oil lines

MADI responded no.

DAILEY commented that there is crude oil west of the property running south and would recommend for the applicant to check on it. He believes there could be a gas line in the property and would like the applicant to double check.

MCKAY said that area just to be an oil field and there might be dry holes and wells. He recommends applicant to double check especially since there will be digging in the ground.

MADI said they have pulled records and oil leases and digging that happened in the place and concluded there is nothing that would not allow burial to happen.

B. JOHNSON asked if platting would be needed when parking is added.

CHAIR FOSTER said his understanding is when a permit is requested they would be required for a plat.

B JOHNSON asked if the easements are identified and covered when the property is plated.

CHAIR FOSTER responded yes, it would go to the Subdivision Committee.

B. JOHNSON said there are a lot questions but such questions would be covered during the platting process.

DAILEY said there are still at least three producing wells in the ground, not in the area proposed but to the west.

GREENE commented that the public works engineering for the City of Wichita has requested a 60-foot street right of way when the property is platted that would come up as part of the plat. Greene asked if that would be problem for the applicant. Applicants indicated he is in agreement

MADI responded that they agree and that it is stated in the staff report

DAILEY commented that there is no parking along 69th street with no parking along the edge with ditches and a narrow county road.

MADI said he appreciates the information and all parking will be inside the property.

DAILEY comments that this item should probably be deferred until the material is handed in and letting the staff look at it, give the Commission an OK, come back, and vote.

MCKAY said he believes that is part of the condition for approval.

DIRECTOR MILLER responded that it depends if the Commission is comfortable with the conditions for approval. He said staff will enforce those conditions and if the Commission wants to review and

verify what is asked has been done it would have to come back to MAPC, the choice would be at the Commissions discretion.

DAILEY asked if staff has any comments.

CLEMENTS said Director Miller summarized the two options that the Planning Commission has.

DAILEY said he understands the options but asked about opinions from what staff would rather have.

CLEMENTS said he would rather have the Planning Commission look at this item before its moves on. He does not know what the applicant's contract is regarding timing.

CHAIR FOSTER asked the applicant what is their timeline and if a deferral would hurt a purchase or any activities.

MADI responded that they have postponed once to obtain this conditional use and closing on the property purchase is June 8. He said they paid the seller to get an extra thirty days from last closing date. He said the cemetery they currently use is about an hour away and is at full capacity.

RICHARDSON is comfortable with staff reviewing the site plans as a condition of the approval and moving ahead with it.

GREENE asked staff if zoning of the parcel will remain single family residential and approving a conditional use. He would also like to know if there is a landscape requirement.

DIRECTOR MILLER said that the County does not have a landscape ordinance as the City of Wichita does. He adds that unless the Commission wants that as part of the conditions, it needs to specify a landscape requirement. He said staff would be more comfortable if the Commission specifies and provides standards to use, either the City of Wichita's ordinances or something similar.

GREENE asked if this were a request within the City limits of Wichita would there be a requirement for landscaping.

DIRECTOR MILLER said there would be a landscape buffer, which is one tree and three shrubs every forty feet without a fence. He adds if there is a fence it would be one tree per forty feet.

DOOL said if approved today he would suggest that the commission requires the same landscaping requirements on this item that the city would.

MILLER STEVENS commented that it is her understating that the unused phases would continue to be farmed.

MADI said it would be an option, but has not been discussed.

MILLER STEVENS said with landscape requirements would the Commission be deterring the applicants option to use the unused land for the other three phases and other possible uses.

CHAIR FOSTER said when talking about landscape buffer it does not have a strict application of the City ordinance and provides an example of not planting shrubs and trees to be as a buffer. He said it comes down to what is appropriate and he would consider the east and the north where there is current residential that could be addressed by phase and not the full installation. However, there should be an overall plan in consideration for the neighbors.

RICHARDSON asked if it would be okay with landscaping by phases.

DIRECTOR MILLER said if there was a landscape requirement they would do it by phase and require the entire border to be landscaped at one time and wait until the next section is open to proceed with landscaping.

RICHARDSON commented that it makes sense since it looks like it would be 25 years per phase.

CHAIR FOSTER said parking would be done at the initial phase and it accomplishes a lot of buffer.

DOOL said he appreciates Mr. Foster's comments, and asked what staff requirement would be for landscaping.

DIRECT OR MILLER said he agrees with Mr. Foster and that there is no point in planting shrubs on the north and south or along 69th street. He said it would be better if the Commission would provide the standards they consider appropriate and staff would enforce it.

MADI said they would comply with landscaping requirements.

CHAIR FOSTER said his suggestion would be that the buffers be treated with trees with spacing of 30 feet the length of the buffer because shrubs would be excluded. Tree mixture including a minimum of fifty percent evergreen for screening during winter.

MCKAY said he agrees and asked if they are talking just about the south and the west of each phase since there are trees on the east side

CHAIR FOSTER said this is when they rely on staff.

SCOTT KNEBEL PLANNING STAFF said according to the code it does not matter who owns, the owner of the subject tract is responsible for it being there, and if the other owner would lose it, they have to replace it.

MCKAY asked if they are only talking about the west and the south end.

CHAIR FOSTER replied that the north would involve parking.

DAILEY said they need to investigate whose land those trees are on and where that property line is.

MCKAY said it would show up in a survey.

B. JOHNSON would like move to approve per staff comments adding a landscape buffer along the parking, south and west with 30 foot centers of trees and fifty percent evergreens. In the understating, the applicant would be responsible for landscaping the area. Including condition number six added by Planning Staff.

HARTMAN said are they stating that the trees be the same size as the City of Wichita requires.

B. JOHNSON responded yes.

RICHARDSON asked legal counsel if as part of this approval would they be approving a funeral home.

WAGGONER said at this point it would not be a part of the motion, and that would be an accessory use if they wanted to build it under the zoning code it is an accessory structure. He knows the intent of the applicant is not to build one.

RICHARDSON said he understands and just wants to be clear.

KNEBEL commented that it could be added as a condition that a funeral home is not being approved.

B JOHNSON said the applicant would have to come back and get an approval and the applicant already stated that they would not do it.

CLEMENTS said the motion pertains primarily to condition number one adding landscaping provisions on the south and west property line with trees at 30 foot spacing being fifty percent evergreen tree, subject to the City of Wichita landscape ordinance.

CHAIR FOSTER said the north as well and parking. He adds if on the east side the hedgerow dies that the applicant would be required to install landscaping there. Item number six by staff is also included and platting along with it.

CLEMENTS said it was talked about landscaping each phase and would like to be certain if the planning commission expectation that each phase be converted to turf.

CHAIR FOSTER said the applicant stated people may have gravel over the burial site and would like clarification because in the information received the goal seemed to be get back to grass as a surface.

CLEMENTS said he would like clarification from the applicant as well as fencing material and what the thoughts of the Commission were. He said this was a question that the City of Valley Center had as well. He is going to assume chain-link and would like to get confirmation.

CHAIR FOSTER asked the applicant to address the gravel on top of the gravesites, fencing material and height.

JESRI said if the family chooses it, it would be decorative gravel bordered with stones and the rest would be grass. He said it would be chain-link fence and it would be six foot.

CHAIR FOSTER asked if the fence would have an outrigger with wire for security.

JESRI said it would be something to consider.

CHAIR FOSTER said sometimes it is not allowed depending on the district.

DAILEY asked if the rest of the five acres where there are no burials.

JESRI said it would stay natural and the front will stay as a farmland. He adds that unless you are looking for a cemetery and a driveway to leads to it, most likely it will not be seen, until there is a small building for equipment.

DAILEY asked if that is part of the site plan.

JESRI said that would come back for approval.

CHAIR FOSTER said with regards to the drive access it should be included that fire take a look at this and make sure it meets any requirements.

GENTRY commented that in an extreme condition a fire truck would need to have access.

MCKAY asked if there would be a required material on that road.

DIRECTOR MILLER said he would clarify that fire could review and require. He adds that typically the County requires gravel and a minimum width and it would not be part of the motion as long as its understood that it's a service code being followed.

MOTION: To approve subject to staff recommendation.

B. JOHNSON moved, **MILES** seconded the motion. (12-0
