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# Sedgwick County

525 North Main Street 3rd  
Floor  
Wichita, KS 67203

## Legislation Text

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File #: 16-644, Version: 1

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### **CONSIDERATION OF LIFTING OF RESTRICTIONS CONTAINED IN RESTRICTIVE COVENANT AND JOURNAL ENTRY FOR PROPERTY AT 6609 N WOODLAWN.**

Presented by: Justin M. Waggoner, Assistant County Counselor.

**RECOMMENDED ACTION:** First, authorize the County Counselor's Office to prepare, and the Chairman to sign, a document that would remove restrictions contained within the Declaration of Restrictive Covenants, such that said document is to be recorded with the Register of Deeds. Second, authorize the County Counselor's Office to file a motion within Case No. 98 C 3245 and effectuate any other documents to be filed with the District Court that would remove restrictions upon the use of the property included within the Journal Entry of Judgment dated August 18, 1999.

### PUBLIC COMMENT

Boop, LLC, owner of the property at 6609 N. Woodlawn ("the Property"), has requested the removal of conditions limiting the usage of the Property that are contained within a restrictive covenant and a journal entry.

In May 1998, County Code Enforcement notified a prior landowner, Maurice Caster d/b/a Caster Excavating, that certain activities onsite violated the County's zoning regulations. Mr. Caster appealed that determination to the County BZA, which upheld the position put forth by Code Enforcement. The owner filed a lawsuit in November 1998, challenging the enforcement of that decision in Sedgwick County District Court.

In August 1999, the District Court awarded judgment in favor of the County, and enjoined Mr. Caster from conducting metal recycling on the Property, from dumping construction debris on the Property, and then ordered the activities on the Property to be limited to matters generally related to Mr. Caster's excavating, demolition, and construction business.

In addition to the aforementioned journal entry, also in August 1999, the landowner filed a restrictive covenant as part of the settlement of the litigation in which the owner agreed to certain restrictions on activities on part of the Property.

Both the restrictive covenant and the journal entry identify a portion of the land as the "LI Property", which has a legal description of:

The South 534 feet of the East 850 feet of the Northeast Quarter of Section 12, Township 26 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas.

The entirety of the parcel at 6609 N Woodlawn is approximately 44 acres. Approximately the easternmost 19 acres of the Property is zoned light industrial and constitutes what is referred to as the "LI Property." The other approximately 25 acres of the Property is zoned rural residential and

constitutes what is referred to as the “RR Property.”

The restrictive covenant states that, “[t]he LI Property shall be used exclusively for Rural Residential purposes from and after the latter of: (a) January 1, 2010, or (b) the transfer of ownership of any of the LI Property to any person other than: (i) Declarant’s [Maurice and Allie Caster] lineal descendants, or (ii) an entity the majority control of which is vested in Declarant or Declarant’s lineal descendants.”

Both conditions that would cause the LI Property to be eligible solely for rural residential purposes have occurred. As a result, the LI Property may currently only be used for rural residential purposes. The restrictive covenant has other miscellaneous less cumbersome restrictions that apply to both the LI Property and the RR property in a manner to either limit or regulate their usage.

The journal entry references the restrictive covenant, but does not appear to expressly incorporate its provisions into the prohibited uses for the Property. The journal entry does not contain any provision similar to the restrictive covenant regarding the LI Property only being used for rural residential purposes. However, there is a significant amount of overlap of the “miscellaneous less cumbersome restrictions” mentioned in the preceding paragraph between the restrictive covenant and the journal entry.

The restrictive covenant remains effective for 25 years from August 18, 1999, or upon occurrence of sufficient rezoning around the Property for LI or more intensive uses. The required scale of rezoning has not occurred. The journal entry likely runs with the land and would likely be considered to be effective unless and until it would be modified by a subsequent court order.

The restrictive covenant was filed with the Sedgwick County Register of Deeds and should have been of record to put the current owner on notice of its provisions.

Within the past year, the current owner of the Property has attempted to sell the property to at least a couple of different companies. First, there was a proposed sale to an asphalt company that had a corresponding conditional use. This Property is within the Urban Area of Influence for the City of Kechi and when the conditional use was presented to the Kechi Planning Commission, the Planning Commission made a finding against it being an appropriate use. Thereafter, the conditional use request was withdrawn.

A few months later, another potential buyer was interested in relocating their business onto the property. That business intended to build one or more additional buildings on the Property. That business learned that building these buildings would require them to plat the property and follow the Wichita-Sedgwick County Subdivision Regulations. Since the business would result in a high volume of trips, pursuant to the Subdivision Regulations, they would have been required to pave some of the currently unpaved portion of Woodlawn that borders the Property. As a result of this cost, the parties did not reach an agreement.

At this time, Boop, LLC does not have an intended specified use for the property, nor is there any pending zone change, conditional use, or other related matter pending in front of the Metropolitan Area Planning Commission. Instead, Boop, LLC has made the request to lift present restrictions on the usage of the property in the hope of making the property more marketable.

There are a few reasons that the staff recommendation is to lift the restrictions. First, the restrictions appear to have been tailored to a noncompliant property owner 17 years ago who no longer owns the property. The County is not aware of any similar lack of compliance by the present owner. Second, some of the properties in the vicinity of the Property maintain similar zoning to the Property, meaning that its LI usage would not be entirely out of character with surrounding properties. Third, the County generally wants to encourage reasonable and appropriate development of property. The lifting of the restrictions on this property would allow the current owners to have appropriately marketable property that is consistent with how the property is zoned.

Alternatives: Four additional alternatives to the recommended action include either: (a) taking no action on the restrictive covenant and journal entry; (b) removing some of the restrictions contained within the restrictive covenant and journal entry, but keeping other restrictions in place; (c) taking action on the restrictive covenant, but not the journal entry; or (d) taking action on the journal entry, but not the restrictive covenant (which expires in 2024).

Financial Considerations: N/A

Legal Considerations: The County has the authority to amend the restrictive covenant, provided that the Property's owner would agree to such amendment. The County has the authority to request a court to modify its journal entry and the District Court maintains ultimate discretion regarding whether to grant such modification. Approval for both actions is by simple majority vote.

Policy Considerations: N/A

Outside Attendees: It is anticipated that surrounding property owners and/or their representatives will be present.

Multimedia Presentation: PowerPoint slideshow.