CITY OF WICHITA

**Wichita-Sedgwick County Metropolitan Area Planning Department**

October 21, 2008

Jim Sheldon
Director of Catholic Cemeteries
1640 N. Maize Rd
Wichita, KS 67212

Re: **VAC2007-00042** - Request to vacate easement dedicated by separate instrument, generally located east of Hillside Avenue, south of Kellogg Street, on the southeast corner of Orme Street & Rutan Avenue.

Dear Mr. Sheldon:

At its regular meeting on Tuesday, October 21, 2008, the Wichita City Council considered the request. The action of the City Council was to APPROVE subject to the recommendation by the MAPC.

If you have any questions about this matter, please call 268-4494.

Sincerely,

Bill Longnecker
Senior Planner

BL:le

cc: Jim Armour, City Engineer, Public Works Department, Mail Stop 1-71
Paul Gunzelman/Carla Jones, Public Works Engineering, Mail Stop 1-71
Vivian L. Cunningham, 602 S. Rutan, Wichita, KS 67218-1917
James & Marie Able, 606 S. Rutan, Wichita, KS 67218-1917
Loren L. Murray, Delores D. Cook, Lori D. Cook, 5734 E. 10th, Wichita, KS 67208-1917
Catholic Diocese of Wichita, 424 N. Broadway, Wichita, KS 67202-2310

**BEFORE THE CITY COUNCIL OF THE**
**CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**

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| **IN THE MATTER OF THE VACATION OF UTILITY EASEMENTS DEDICATED BY SEPARATE INSTUMENTS** | ) | |
| | ) | **MAPD CASE NO.** |
| **GENERALLY LOCATED EAST OF HILLSIDE AVENUE, SOUTH OF KELLOGG STREET, ON THE SOUTHEAST CORNER OF ORME STREET & RUTAN AVENUE** | ) | **VAC2007-00042** |
| **MORE FULLY DESCRIBED BELOW** | ) | |

## VACATION ORDER

COMES NOW your petitioner(s), the Catholic Diocese of Wichita, c/o Bryan R. Coulter and pray(s) for the vacation of the following described utility easements dedicated by separate instruments, to wit:

> The utility easement dedicated by separate instrument located on the east 10-feet of Lots 52-60 even (Miscellaneous Record 69, page, recorded May 16, 1929) & the utility easement dedicated by separate instrument located on the north 5-feet and the east 8-feet of Lot 50, (Miscellaneous Book 513, page135, recorded February 5, 1963) all on Rutan Avenue, all in the Indiana Subdivision in Vincennes Addition, Wichita, Sedgwick County, Kansas.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in The Wichita Eagle and the Derby Reporter on December 20, 2007, which was at least 20 days prior to the public hearing.

2. No private rights will be injured or endangered by the vacation of the above described utility easements dedicated by separate instruments, and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

4. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

5. The vacation of the utility easements dedicated by separate instruments described herein should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 21st day of October 2008 ordered that the above described utility easements dedicated by separate instruments are hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall certify a copy of this order to the Register of Deeds of Sedgwick County.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary Rebenstorf, Director of Law

METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM NO. 2-3
January 10, 2008

## STAFF REPORT

**CASE NUMBER**: **VAC2007-00042** Request to vacate easements dedicated by separate instrument

**APPLICANT/OWNER:** Catholic Diocese of Wichita c/o Jim Sheldon, Director of Catholic Cemeteries

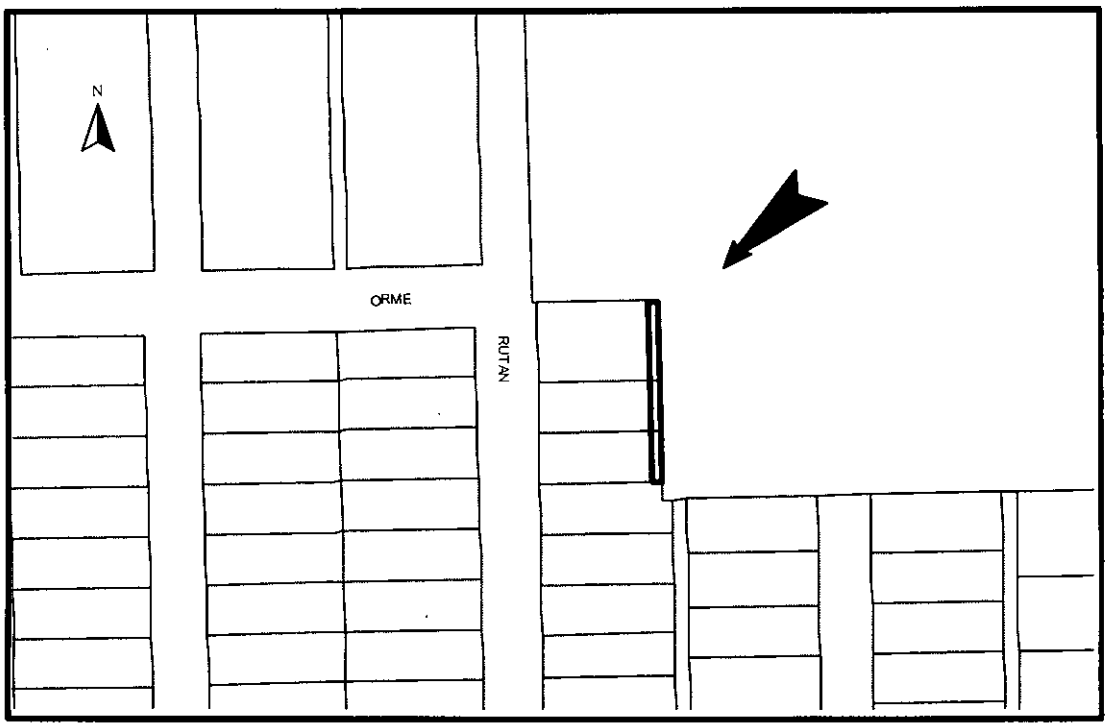
**LEGAL DESCRIPTION:** Generally described as the utility easement dedicated by separate instrument located on the east 10-feet of Lots 52-60 even (Miscellaneous Record 69, page, recorded May 16, 1929) & the utility easement dedicated by separate instrument located on the north 5-feet and the east 8-feet of Lot 50, (Miscellaneous Book 513, page135, recorded February 5, 1963) all on Rutan Avenue, all in the Indiana Subdivision in Vincennes Addition, Wichita, Sedgwick County, Kansas.

**LOCATION**: Generally located east of Hillside Avenue, south of Kellogg Street, on the southeast corner of Orme Street & Rutan Avenue East (WCC #III)

**REASON FOR REQUEST**: Expansion of cemetery

**CURRENT ZONING**: The site (ZON2007-41) and the abutting northern and eastern properties are zoned "B" Multi-family Residential. Abutting southern and adjacent western properties are zoned "TF-3" Two-family/Duplex Residential

**VICINITY MAP:**



The applicant is requesting vacation of the described easements dedicated by separate instrument. There are no manholes, water or sewer lines located in the described easements. Contact Westar in regards to their utilities in the easements.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the described easements dedicated by separate instrument, with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition
and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time December 20, 2007 which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by the vacation of the above-described portion of the easements dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner, the prayer of the petition ought to be granted.

Therefore, the vacation of the portion of the easements dedicated by separate instrument described in the petition should be approved with conditions;

(1) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants. Contact Westar in regards to their utilities in the easements. If utilities are to be relocated retain the easement, until they are relocated and a replacement easement is recorded with the Register of Deeds to cover the relocated utilities. Provide Planning Staff with the original dedication of easement for relocated public utilities to be recorded with the Register of Deeds. Relocation of utilities will be at the owner's expense and per City standards.
(2) All improvements shall be according to City Standards, at the applicant's expense.
(3) Per MAPC Policy Statement #7,all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

(1) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants. Contact Westar in regards to their utilities in the easements. If utilities are to be relocated retain the easement, until they are relocated and a replacement easement is recorded with the Register of Deeds to cover the relocated utilities. Provide Planning Staff with the original dedication of easement for relocated public utilities to be recorded with the Register of Deeds.
(2) All improvements shall be according to City Standards, at the applicant's expense.
(3) Per MAPC Policy Statement #7,all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

VAC2007-42

# N.W.¼ SEC.2

