

DR 78-4 - C.U.P.'s - Aesthetic
Control, Design Consideration and
Approval Process.

February 13, 1978

E. H. Denton, City Manager

Robert A. Lakin, Director of Planning

C.U.P. - Aesthetic Control Design Consideration and Approval Process

Attached is a report on a set of controls for large developments within the community. We have attempted to identify what we believe are current concerns, review ways of overcoming these problems, and set out a series of recommendations for the City Commission's consideration.

Specifically, we have recommended:

- (A) That the City Commission approve in concept the planned unit development approach as generally outlined in the new zoning ordinance. We have requested additional directions as to approval procedures to be followed.
- (B) That the City Commission by policy statement require additional information and activity as a part of the current C.U.P. (Community Unit Plan) approval. These range from planting and traffic circulation approval through possible community impact studies.
- (C) The City Commission concur in the enforcement policies outlined in the report.

This report has been submitted to the Department of Public Works and Legal Department for their review and comment. Finch has also read and provided some additional input. I believe all who have reviewed generally concur in the paper as submitted.

Attached are comments received from Central Inspection and Law.

This matter should be scheduled for the City Commission at your convenience.

Robert A. Lakin
Director of Planning

RAL:rme
Attachments

Copy of report mailed to: Ray Bruggeman, Dir., Dept. of P.W.
Robert Feldner, Supt. of C.I.
John Dekker, Dir. of Law
H. R. Kuhn, City Attorney

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

February 13, 1978

TO Board of City Commissioners
FROM Robert A. Lakin, Director of Planning
SUBJECT C.U.P.'s - Aesthetic Control, Design Consideration and Approval Process.

The Problem - As stated by the Commission, many of the city's larger developments look terrible. This is expressed as dissatisfaction with a number of items. Included in these concerns is architectural style, divergence or use of several architectural themes on the same "project"; the creation of multiple structures when a "center" was promised; automobile parking unbroken by interior site landscaping; lack of continuity in sign graphics both on faces of buildings or for street area signs; the extent or lack of landscaping/screening approved and installed; the care and maintenance of landscaping, walls and fencing; and the failure to build what was promised. There may be more items. Some are more significant than others. Commissioners, staff, and public also have different perceptions as to what is good design and what is not.

Another problem has been enforcement of C.U.P. conditions throughout the construction stage and particularly after occupancy of the project. As to the latter condition, maintenance of plantings and walls as well as unauthorized modifications have been a problem.

On July 26 1977, the City Commission directed the administrative staff to develop proposals for the control of aesthetics of construction and the methods of enforcement to assure that developments are built in such a way as to be compatible with the surrounding neighborhood.

Development of C.U.P. provisions in Wichita

The evaluation of design approval of larger tracts in Wichita has swung from a precise and demanding set of requirements to a very loose set of provisions now contained in the ordinance. In the 1950's, the Planning Commission, staff and City Commission recognized that large scale developments such as shopping centers created special community and area problems which should be dealt with as a condition of development approval. To obtain approval for a shopping center, a precise site plan including specific building size and location was required. Also, an economic justification or feasibility study, a traffic study and plan, and a landscape plan was required. Also a specific time schedule for development was required. When approved by the Board of City Commissioners, all plans and requirements were filed with the Register of Deeds.

Approvals of proposals to the detailed outlined above and given before leases were signed proved to be too confining. Building areas changed with leases, new design concepts developed and economic conditions changed. When the owner of Towne East first obtained their zoning (160+ A) (not the current owner or developer) they requested and obtained a complete change in procedure for C.U.P. approvals. This was to gain "flexibility" so they could look for a developer. Those requested changes resulted in the regulations we use today.

These regulations now deal only in generalities, super setbacks, curb cuts, landscape at the edges and a limitation on uses (often not too limited; many read "uses as permitted in LC") and maximum bulk controls (floor area ground coverage, etc.). The latter usually far exceed the market potential and are in essence little or no control at all.

A basic problem is that shopping centers and large apartment projects are never really put together until after zoning is obtained. The process is largely one involving speculation. This is not wrong, but answers to problems identified above are not easily solved until the project firms up or unless the developer puts substantial predesign money into the project. Most applicants asking for such zoning have not been willing to do this and to date, neither the Planning Commission nor City Commission have made this a requirement for presenting applications and receiving approval.

Pursuant to the directive of the City Commission, members of my staff have researched existing ordinances in other cities to determine what methods are used to assure development which is architecturally compatible with the neighborhood.

A major problem in Wichita has been with large scale commercial developments which are originally proposed as an integrated unit, which are later developed on a parcel by parcel basis by different owners and builders. When looked at on an individual basis, the uses/buildings may well be aesthetically pleasing, yet when viewed in total, form a visual hodgepodge of unrelated architectural styles. Conflicts in site design also occur (additional curb cuts wanted, internal site traffic circulation and poorly laid out off street parking). The problem is further complicated by franchise or chain operations which have their own individual design standards and site development plans which are duplicated in every location across the county without regard for the individual setting. Many chains however have found ways to cope with being a part of a center. One example of development which has quality building on an individual basis, however, is an architectural mismatch in total, is the Cobblestone Alley development on the southeast corner of Central and Rock Road. Originally conceived (and sold to the public, MAPC, and Board of City Commissioners as an integrated development of

quaint shops with an architectural blend, financing problems led to an individual parcel sell off with such divergency in architecture from the colonial style Ethan Allen furniture store to the modern theaters located on the site. Even the architecturally integrated and pleasing Towne East Square development has the individual franchise restaurant operation, Sambo's, which appears totally out of place (at least to this writer) with the surrounding development.

Planned Unit Developments

These situations arise, as I see it, from a lack of adequate feasibility studies by the applicant; the lack of expertise by the developer in going from conversion of raw land to developed parcel; luck; economic conditions; and/or deficiencies in our Community Unit Plan regulations. This fact has been recognized by the staff for some time and accordingly, considerable effort has been expended in development of a three phase P.U.D. (Planned Unit Development) ordinance which is modeled after the recommendations of the American Society of Planning Officials and has been successfully employed in other major cities across the nation over the past ten to twenty years. This P.U.D. provision has been incorporated into the proposed zoning ordinance originally as an optional device and will be considered along with the proposed ordinance in public hearings slated for spring of 1978. The redrafts of the ordinance may propose sites over "X" acres be required to submit a P.U.D.

The Planned Unit Development (P.U.D.) District is not located on the zoning map per se, but specific parcels would be designated only after application by the developer and approval by a "designated public body" as a zone change to the P.U.D. district. The statutes provide that a "designated public body" can be the governing body, planning commission, staff person, hearing officer, etc. The essence of the P.U.D. combines the traditional idea of zoning, e.g., regulation of use, height, bulk and improvements with subdivision techniques of lotting arrangements and guarantee of public improvements. Fundamental to the P.U.D. process is the site plan review with three principal actors -- the developer, the public review authority represented by staff, planning commission and governing body, and those people who reside in the area of the proposed development.

The American Society of Planning Officials has recommended a three stage review process:

- 1) a preapplication conference - usually with staff to discuss concepts, policies and standards
- 2) a preliminary plan submitted for public hearing and containing the general uses, specific use limitations, setbacks,

internal circulation patterns (vehicular and pedestrian) and general arrangement of buildings, open space, landscape areas, buffer areas (and techniques), controlling standards such as residential density, number of units or commercial controls (floor area, etc.) and parking standards

- 3) a final development plan which contains the design specifics of the preliminary development plan in their final form. A detailed site plan shall be included in the final development plan. However color, materials, texture and architectural style as indicated by building elevations are not normally part of the ordinance review requirements.

Inherent in the three stage process is the timing element. The preliminary plan shall be approved for a specific period of time, with final plan submission required in a given time frame, and failure to build within a certain period after final plan approval shall constitute termination of the approval unless an extension is granted by the governing body. Thus, the overall development is tied to an integrated specific proposal with development occurring in a specified way within a specified time.

Alternate Approaches to Design Control

We have reviewed the other commonly used design control techniques and have described those activities in Appendix A. Few, if any of these techniques appear to be adaptable to Wichita.

Aesthetic Control in Wichita

Although Wichita may not have had the specific type of architectural controls discussed in the appendix, several types of such control have been in existence.

- A) Urban Renewal Projects - the Urban Renewal Board considers specific redevelopment projects with the building and architectural plans approved in conjunction with the project. Plan modification requires Board approval and City Commission approval.
- B) Aesthetic Type Ordinances - sign controls and screening and landscaping provisions are found within the current zoning ordinance.
- C) Historic Landmark Preservation Districts - the Historic Landmark Preservation Committee reviews architectural plans for exterior improvements of designated landmarks or structures located within a designated historical district.

- D) Private Covenants - although not enforceable by governmental bodies, many existing subdivisions have private covenants which require architectural review of building plans by a designated body (Rockwood, Benjamin Hills et al) with standards for style, height, etc.
- E) Previous attempts to require architectural integrity on C.U.P.'s - Two C.U.P.'s which have been approved in Wichita contain some form of reference to design control:
- 1) Comotara C.U.P., Commercial area east side of Woodlawn and 1/4 mile north of 21st Street (revised DP-46) contains a statement on the Commercial Parcel as follows: "Architectural Control of all Buildings will be consistent through total commercial office areas". The language was included by the developer and not as a requirement by the City. The statement is fairly open ended and contains no specific standards of what constitutes "consistent" or "architectural control". It will be pretty much to the discretion of the plans examiner in the Office of Central Inspection to determine what these terms mean.
 - 2) University Gardens, Northeast corner of 21st and Oliver (revised DP-8) C.U.P. required: "the buildings on parcels 8, 10, and 11 shall be designed and constructed as an integrated shopping center structure. Each building shall be attached to the other by means of a common wall or walls resulting in a single continuous structure..." "Integrated" as used in the discussion of C.U.P. approval appeared to relate to a structure having common walls and central location as opposed to Cobblestone which developed as a series of separate (as opposed to integrated) buildings. Language or direction of design exterior as to color, texture, type of material or architectural style was not interpreted to be part of the word "integrated". As interpreted by the Office of Central Inspection the similar architectural detail on the decorative awnings also contributes to an integrated shopping center although the K-Mart and Dillons buildings are somewhat dissimilar in appearance. The lack of specific design standards puts the permit issuance authority at a disadvantage in determining exactly what is required. However, it should be recognized that to write design standards is quite difficult even if deemed desirable.

Alternates for Wichita

Appendix A contains a general discussion of aesthetic controls as well as an examination of techniques used in other parts of the country.

If the definition of the problem in Wichita, e.g., the development of large commercial areas unrelated in appearance either to the surrounding area or to each other is the main problem, certain of the non-applicable techniques can be discarded. Anti look-alike ordinances do not address the issue; development incentives for site plan review are not possible under the present zoning ordinance unless the high level of existing rights in the ordinance are reduced to make incentives more attractive; and special regulations and historic districts don't address the problem. Of the remaining control techniques, a site design review board or a city design commission would require large increases in city staff. Should the Commission seek to explore these techniques further, it is suggested that the Department of Law prepare an analysis of the legal issues involved and that the Department of Public Works prepare some preliminary cost estimates for increased staff needs. An advisory committee representing developer interests and local architects should also be consulted on the subject.

Alternate A - Add PUD ordinance procedures.

As an alternative to the above methods, it is recommended that the three stage approval process for Planned Unit Development be accepted as the most efficient and economical way to address the problem in Wichita. This involves the substantial upgrading of the existing C.U.P. process. The primary advantage is one of cost. No increase in staff would be required and, in addition, the neighborhood or surrounding area would have more of a voice in the plan development during the public hearing process. The P.U.D. Ordinance as contained in the proposed zoning ordinance (see Alternate B) may need further clarification to embody specific design review areas. Certainly additional changes will be needed if the Commission wishes to add the areas of building architectural review. Should the Commission desire to move in this manner, staff should be instructed to make those changes prior to the public hearings on the proposed zoning ordinance.

If the direction is to the P.U.D. process, a determination must be made as to who is to be the "local administrative authority" to carry out the P.U.D. approval. This can be retained by the governing body, or delegated, such as to the MAPC or specific staff or a combination thereof. Much of the review and approval process seems to be administrative in nature. Retention of non-policy areas by the Board of City Commissioners will further increase its work load. However, if the rather subjective area of "good design" is to be satisfactorily resolved, final approval authority should probably be retained by the City Commission. The following is one suggestion as to how the process might work. Preliminary P.U.D. approval could be by Board of City Commissioners through MAPC (like existing C.U.P. approval). Final plan approval could be by

MAPC with appeal to Board of City Commissioners. A procedure to allow for administrative adjustments by the staff with monthly reports to the City Commission as to action taken could be initiated. Specific proposals as to procedures could be brought to the Board of City Commissioners when zoning ordinance amendments are submitted. However, the staff would like to have an indication as to the degree of involvement to which the Board of City Commissioners would want to participate.

Alternate B - City Commission Policy on C.U.P.'s.

Another course of action is to immediately add additional conditions as a matter of policy on C.U.P.'s now gaining approval under the existing C.U.P. ordinance. Specific changes the Commission may wish to consider, include the following:

- 1) Require a community impact study as a condition of approval on projects over a given size (10 acres commercial, 15 acres multi-family residential). The impact study would need to deal with quality of life issues, i.e., schools, recreation, drainage, open space, impact on other public facilities and services, traffic analysis, fiscal impact and benefits, economic feasibility and impact on existing community development. A specific outline and format should be developed for applicants to follow in preparing their submission.
- 2) Establish time limits for starting the project and establish requirements as to the amount to be built (example, 50% of main buildings before free standing buildings).
- 3) Require detail planting/landscape plans to be submitted to Board of City Commissioners and MAPC at time of hearing and approval. Same for detail on walls. Alternates to this would be to retain approval by the Director of Planning or (other agencies, such as Director of Parks, Director of Public Works, Superintendent of Central Inspection) combination thereof; or provide more specific direction as to the nature of the landscaping to be specified on the C.U.P., e.g., thick, deciduous to hide/screen a given view; hide cars on lots; provide attractive vertical wall with solid hedge material etc., plant groups or elements spaced every "X" feet; ground cover other than grass, used for screening, etc.
- 4) When landscape/screening using plant material is to be used, require underground watering systems or adequate number of strategically located water outlets. This would also apply to (8) below if adopted.

- 5) Require an internal circulation plan approved by Traffic Engineering, at the time of MAPC and BCC hearing and approval. (Alternate might be separate approval by Board of City Commissioners or Traffic Commission prior to building permit issuance.)
- 6) Require Traffic Studies when deemed appropriate.
- 7) Instruct Central Inspection Division to require fiscal guarantees for screening, walls, landscape and major entrances, irrigation systems (on-site improvements) when a building permit for main buildings (including free standing buildings) is issued and when the same is not included in the same construction contract.
- 8) Require parking lots or areas of parking lots having over 40 spaces to provide internal landscaping to break up large expanses of asphalt.

Additional items the Commission may wish to consider, but which are not recommended due to problems discussed elsewhere in this paper are:

- 1) As a condition of C.U.P. approval, require that before building permits are issued, that the following be submitted to the Board of City Commissioners for review and approval.
 - a) Site plan including location of all buildings and detailed internal traffic circulation plan.
 - b) All buildings including type, elevation(s), color and texture of material.
 - c) Detail of all signs on building faces and design of all free standing signs.

Approval to be determined as to quality of design, compatibility as to blending with and being part of the adjoining and nearby development (both existing and planned) and environment, conformance to statements of intent by the developer, MAPC and BCC at the time of C.U.P. approval.

Alternate C - Enforcement.

A third set of options is related to enforcement. The following are a series of policy and or administrative acts to provide better enforcement. These have been jointly reviewed by MAPC and Public Works.

- 1) A check list be developed by the Central Inspection Department (plans examiner staff) for use by the field inspector. This would be in addition to or an expansion of items normally checked regarding construction inspection. Things that should be included are:
 - a) fences or wall
 - b) landscape material (refer to separate plan - give reference phone to call for assistance, MAPD or Firsching); sprinkler or faucet installation for maintenance of plant materials
 - c) curb cuts
 - d) major entrance design and construction (reference to Traffic Engineering for assistance)
 - e) special drainage provisions (pond, lining, grade, etc.)
 - f) other special items which might be individual to the specific C.U.P.
- 2) The plans examination staff should keep a running total on each C.U.P. of the gross floor area, both on the total site and individual parcel basis. Any plans submitted on an existing C.U.P. site should specifically note all existing structures, their gross floor area, and G.F.A. (gross floor area) of the proposed structure.
- 3) No permits should be issued on any C.U.P. unless the entire site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.
- 4) No administrative adjustments on C.U.P.'s should be granted unless the total site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.
- 5) No occupancy permit shall be issued unless the required screening or landscaping, entrances (drives) and or other C.U.P. requirements have been installed or completed or unless they have been guaranteed to be put in by a specific date.
- 6) No improvements should be deferred until a later date unless sufficient guarantees (cash, letter of credit, etc.) have been made for the improvements.

Summary

It is recommended that:

- 1) The specific sub-elements in Alternate B be identified and stated as Board of City Commissioners policy for immediate implementation.

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- 2) That the Commission approve in concept the three tier procedure for PUD, Alternate A, and indicate their initial (not binding) preference as to the degree of Board of City Commission involvement in approvals.
- 3) The Board of City Commissioners concur in Alternate C as to enforcement procedure.
- 4) Provide such other direction as deemed in the public interest.

Robert A. Lakin
Director of Planning

Appendix A

Background Information on Aesthetic Controls

Early efforts of design control is not a recent concept. It was used in the 19th Century to preserve the environment near public monuments or buildings of historic significance. Since then, municipalities have exercised such control to exclude construction that is out of character with other development in the area, to enhance an historical characteristic or theme within an area, and to prohibit or de-emphasize billboards, tall buildings, and other visual interference of scenic vistas and areas of natural beauty.

The first application of public architectural review to influence the appearance of new or reconstructed private buildings in the United States is generally credited to Santa Barbara, California. A 1925 ordinance established an architectural review board following an earthquake which destroyed a substantial number of structures on the principal business street. The board passed upon some 2,000 building permits over an eight month period and succeeded in having new construction proceed in the "Old California" style. The ordinance was then repealed.

Over the next few decades architectural controls were confined primarily to regulating "nuisance" type situations such as junkyards and billboards or in preserving areas of a unique historic and architectural heritage as in the preservation of the French Quarter in New Orleans, Louisiana; the core area of Santa Fe, New Mexico, and the waterfront areas of Nantucket, Massachusetts.

Since the late 1950's however, other architectural or exterior design review boards have been established throughout the nation, with each board having varying degrees of power and responsibility.

Legal Considerations

As might be expected, design review boards and their relationship to aesthetics have been the subject of considerable legal discussion.

The regulation of appearance in historic preservation areas has by now received rather firm judicial acceptance. Beginning with the New Orleans cases stemming from the Vieux Carre provisions of the Louisiana Constitution and extending through advisory opinions in Massachusetts relating to preservation of Nantucket and Boston's Beacon Hill, the string of cases includes a 1964

decision by the New Mexico Supreme Court upholding rather detailed architectural regulations for the Historical District of Santa Fe (including a restriction against window panes more than 30 inches square).

The Oregon Supreme Court has sustained total exclusion of junkyards from a city solely on aesthetic grounds, the Pennsylvania Supreme Court has sustained the licensing of junkyards on the basis of aesthetic affect on the community, and the highest courts of both Washington and Kentucky have sustained requirements that junkyards be fenced or screened from highways. The New York Court of Appeals has upheld a prohibition against clotheslines in front yards and an intermediate court in New Jersey upheld a prohibition against parking of trailers outside a building; both cases in part decided on aesthetic grounds.

Both California and North Carolina have state enabling legislation which authorizes site and design review boards. The judicial history of architectural controls on structures and buildings has been rather spotty with cases in New York in the early twenties ruling that aesthetics alone were not a valid exercise of the police power yet aesthetic ends could be achieved by stretching the purpose of an aesthetic regulation to reach the orthodox components of the police power -- public health, safety, and morals. The California Courts generally invalidate restrictions on the use of private property for aesthetic purposes alone as an unconstitutional taking, yet have ruled that aesthetic purposes may be considered, as a part of the police power where other factors are found to exist. Kansas has also ruled as to the latter in *Ware vs. Wichita*. If aesthetic considerations are woven into validly enacted zoning ordinances which deal with other factors, the California Courts will tend to uphold them.

In summation, although the Courts are reluctant to use aesthetics as a sole determinant of exercise of the police power, the past few years have shown a marked tendency to uphold a regulation of aesthetics when they are reasonable and interwoven within other valid exercises of the police power.

Aesthetic or Architectural Controls Utilized in Cities across the Nation.

Architectural or aesthetic controls across the nation have taken many forms. However, they can be separated on a general basis among the following classifications.

A) Anti look-alike/must look-alike ordinances.

These types of regulations are most often found in affluent suburban communities which seek to regulate residential diversity either pro or con. The must look-alike regulations provide that residential structures must harmonize with other structures in

the area if a certain percentage of the area or block is developed with residences of a similar architectural style. Conversely, anti look-alike ordinances prohibit in excess of a certain percentage of any block from having the same architectural style. Often the same municipalities have both types, e.g., ordinances employing the anti look-alike provisions in developing areas and the most look-alike provisions in established neighborhoods. Routinely, such ordinances are administered by building permit officers on the basis of building plans submitted at the permit stage. Scarsdale, New York, Princeton Township, New Jersey, Arlington Heights and Lake Forest, Illinois, Barrington, Rhode Island, and South Euclid, Ohio, all have one or both of these types of ordinances. These types of regulations would appear to have little applicability to Wichita in that they are rarely found in larger cities, would require a large increase in building permit personnel, and do not address the primary problem in Wichita of architecturally regulating commercial uses.

B) Historic District Preservation

Regulates exterior architectural modification in designated historical sections of the city. The prime examples are found in the aforementioned areas of New Orleans, Santa Fe, Nantucket and Beacon Hill, as well as other cities of historical significance such as Savannah, Georgia. Wichita has the only historic landmark preservation ordinance in Kansas and embodies two historic districts as well as numerous individual historic structures. These types of ordinances are most often administered through design review boards although a few areas utilize the building permit officer with appeal to the governing body.

C) Regulations Affecting Specific Uses Such as Billboards, Junkyards, etc.

Most common type of aesthetic control although often established for purposes of health, safety and public welfare. Most cities in the United States have some form of this type of regulation and it is most often enforced at the permit level. The Wichita Zoning Ordinance has provisions regulating both signs and requiring screening of junkyards and salvage operations. The screening and landscaping provisions of the Zoning Ordinance also would be an example of aesthetic control.

D) Incentive Bonuses for Site Review

These types of ordinances are found in traditional zoning regulations whereby the bulk, height and density requirements are strictly defined with certain districts permitting a development bonus contingent upon the submission and approval of a development plan which also controls architectural style. The Rosslyn area of Arlington County, Virginia, is the most often cited example of this type of aesthetic control. The

developer is granted bonuses both in terms of density and bulk in exchange for submission of definite site plans, including architectural review. The major prerequisite for this type of zoning incentive is that the existing zoning districts must be as strict as possible without constituting a taking of property. This makes the application of such techniques for architectural review almost unusable in Wichita, because the existing zoning districts are so lenient in terms of bulk, density and use (especially in the "B" Multiple Family and Commercial Districts) that no one would ever need a bonus. Even the new zoning ordinance does not propose this degree of strictness.

Another problem is that such ordinances tread close to "contract zoning" which is generally assumed to be illegal in Kansas (except as expressly permitted by the PUD legislation). The ordinance can be structured so that site plan approval is technically a condition to be met in obtaining a building permit rather than a prerequisite for zoning.

E) Design and Site Review Required of All Building Permits

This is the most ambitious of all the architectural review controls and is generally found in smaller communities in California, Oregon and Colorado. The most widely cited of such regulations is found in Beaverton, Oregon, which established a five member Board of Design Review in 1971. No building permit may be issued without the review and approval of the Board as to site, sign, landscaping, and design plans. Only single family and duplex structures are exempt from such review. The Review Board is appointed by the mayor and representation of design and site development disciplines, as well as financial and business interests is required by ordinance. The standards for design review are contained in the ordinance and plans are reviewed by the Planning Staff for compliance prior to Board review.

The major problem with the application of design and site review of all plans in Wichita is that most of the communities which have such requirements are rather small and don't have a large volume of permit applications. (Beaverton only had 75 reviews in the first eighteen months.)

In Wichita, city staff would have to be increased tremendously to provide for adequate design review and the Board itself would be considering probably 30 to 50 applications at each meeting. Also, because of the interrelationship of lenders, architects, planners, and builders, those communities which have total design review have shown a tendency to apply the standard most stringently on "outside developers" while approving local builders plans in a more lenient way.

F) Overall City Design Commission

These types of ordinances differ from the preceding types in that Overall City Design Commissions do not concentrate on each individual building permit per se, but work to provide overall goals and objectives for the City regarding design, often with different areas of the City divided into different design districts.

Following an intensive "Goals for Dallas" program of a decade ago (which included specific objectives in terms of urban design), the City of Dallas created an urban design division within a combined planning and development agency. A core staff of 20 specialists aid all other agencies, developers, and community groups in a continually expanding range of activities. The staff provides guidance for several major development, conservation, and ethnic community districts. Much work is done on city owned or controlled items, e.g., traffic signals, street light standards, other street furniture, street patterns and circulation, park locations and designs and historical theme conservation areas. Around the city are projects, districts, and corridors subject to new design concepts and guideline controls. Design review is performed on zoning changes in areas identified as special districts.

The City of Baltimore, Maryland has created a sophisticated design review and management system which is helping to improve design in the city. All publicly funded projects are reviewed by a design advisory panel which consists of architects and landscape architects. An ordinance provides that one percent of the cost of public projects be spent on works of art.

The City of Seattle established a municipal design commission in 1968 to act in an advisory capacity to the city council in connection with design aspects of all capital improvement projects.

The City of Portland, Oregon, has established an overlay zoning district, the "D" Design Zone, for the purpose of conserving and enhancing the appearance of the city. Most often the "D" zone is applied to areas of scenic value, historical note, and architectural merit. A design committee of the City Planning Commission reviews all building permits in the "D" zone and has the authority to require changes in appearance of the building or land.

Kansas City, Missouri has general planned development districts. A general land use plan is approved for each district which includes specific land use control zones with urban design standards.

The overall city design commissions' functions range from merely approving the design of municipal funded projects to approving building plans of private developers in certain

districts. These special districts tend to be areas of unique natural beauty, historical significance, or ethnic/cultural heritage centers. Although Wichita could attempt such aesthetic regulation (e.g., setting up a special "river corridor" to review plans in a special district adjacent to the Arkansas River), the overall city design commission is not a technique which would address the major problem in Wichita of large commercial activities designed on a piecemeal basis. It is certain that creation of an overall city design commission would increase staff expenditures substantially and such commissions need a consensus in establishing overall urban design goals and objectives.

APPENDIX B

PLANNED UNIT DEVELOPMENT DISTRICT REGULATIONS OF THE WICHITA-SEDDWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION		of residential, commercial, and industrial development to the particular site and the particular demand for housing and other facilities.
ARTICLE I SHORT TITLE	ARTICLE 2 INTENT AND PURPOSE	ARTICLE 3 JURISDICTION, ADMINISTRATION AND DEFINITIONS
1-101. These regulations shall be known and may be referred to as the Planned Unit Development District Regulations of the Wichita-Sedgwick County Metropolitan Area Planning Commission. Its short title shall be the "MAPC Planned Unit Development Regulations."	2-101. <u>Purpose.</u> The application of flexible land use controls to the development of land is often difficult or impossible with traditional zoning district regulations. In order to permit the use of more flexible land use regulations and to facilitate use of the most advantageous techniques of land development, the governing body is authorized to establish planned unit development districts in which the regulations are in harmony with the general purpose and intent of the zoning ordinance and with the comprehensive plan of the City of Wichita, but in which such regulations may differ in one or more respects from the zoning regulations that are generally applicable to the development on a lot by lot basis.	3-101 - <u>JURISDICTION:</u> These regulations shall apply to all tracts, parcels or lots designated by a landowner to be included in a planned unit development district that lies within the jurisdictional area of the Wichita-Sedgwick County Metropolitan Area Planning Commission. 3-102 - <u>DESIGNATION OF LOCAL ADMINISTRATIVE AUTHORITY FUNCTIONS AND DUTIES:</u> The Wichita-Sedgwick County Metropolitan Area Planning Commission, hereinafter referred to as the Planning Commission, is hereby designated as the administrative authority to administer the provisions of these regulations and shall have the following functions and duties: A. To prescribe rules and regulations consistent with the provisions of this Ordinance; B. To maintain permanent and accurate records relating to any planned unit development district established hereunder; C. To act as the receiving and approving authority for all applications for approval of the proposed planned unit development; and when required, to refer and recommend the same to the Governing Body for final action. D. To provide application forms to be used by landowners seeking approval of a planned unit development.
The planned unit development district is intended to serve and achieve the following purposes: To promote the public health, safety, morals and general welfare of the public in an era of increasing urbanization and growing demand for housing of all types and designs; to provide for commercial facilities conveniently located to such housing; to provide for well-located, clean, safe permanent industrial sites involving a minimum demand on transportation, energy resources and other community facilities, to encourage innovation in residential, commercial and industrial development and renewal so that growing demands of the population may be met by greater variety in type, design, and land use of buildings, and for the conservation of adjacent and more efficient use of open space ancillary to said buildings; so that greater opportunities for better housing and recreation, jobs, and industrial plans conveniently located to each other may be extended to all citizens and residents of said area; to encourage a more efficient use of land and public services or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economy may inure to the benefit of those who need shelter; to lessen the burden of traffic on streets and highways; to encourage the incorporation of the best features of modern design in said area, and conserve the value of the land; and, in aid of the foregoing purposes and objectives, to provide procedure which can relate the type, design and layout	3-103 - <u>DEFINITIONS:</u> In the construction of these regulations the following definitions shall prevail: A. "Common Open Space" is a parcel or parcels of land or an area of water or a combination of land and water within the site designated for a planned unit development and designed and intended for use and enjoyment of residents and owners of the planned unit development. Common open space may contain such complementary structure and improvements as are necessary and appropriate for the benefit and enjoyment of residents and owners of the planned unit development. B. "Governing Body" shall mean the elected body of the municipality designed by the Kansas State Statutes to enact zoning regulations. C. "Landowner" shall mean the legal or beneficial owners or owners of all the land proposed to be included in a planned unit development. The holder of a contract to purchase or other person having an enforceable proprietary interest in such land shall be deemed to be a landowner for the purpose of these regulations.	
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	D. "Municipality" shall mean the city and/or county wherein the application area is located.	51	office complexes, hotels, motels, convention centers, major recreational and entertainment facilities, together with such other uses that are designed or intended to serve such activities and uses.
5	E. "Plan" shall mean the provisions for development of a planned unit development, including such drawings as shall serve as a plat or subdivision, all covenants relating to use, location, and bulk of buildings and other structures, intensity of use or density of development, private streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of the plan" when used in these regulations shall mean the written and graphic materials referred to in this definition.	55	C. A development shall be deemed to be an industrial planned unit development when it is limited to industrial uses, warehousing, service businesses, together with such other uses that are designed or intended to serve such activities and uses.
10	F. "Planned Unit Development" is an area of land controlled by a landowner to be developed as a single entity for a number of dwelling units, office uses, commercial uses, or any combination thereof, if any, the plan for which may not correspond in lot size, bulk or type of dwelling or commercial or industrial use, density, lot coverage, and required open space, to the regulations established in any one or more of the districts of the zoning regulations established within the jurisdiction of the municipality.	60	D. A development shall be deemed to be a general planned unit development when it blends residential structures or dwelling units in a unified plan with office, business, industrial and recreation structures or uses, primarily planned to supplement each other.
15	G. "Planning Commission" shall mean the Wichita-Sedgwick County Metropolitan Area Planning Commission.	65	4-103 - CONDITIONS OF APPROVAL: The Governing Body and the Planning Commission shall approve a Planned Unit Development only if it finds all of the following conditions to exist:
20	ARTICLE 4 GENERAL PROVISIONS	70	A. The Planned Unit Development is an effective and unified treatment of the development possibilities of the project site, and the development plan makes appropriate provisions for the preservation of the natural features such as streams, lakes, wooded cover rough terrain, and similar areas.
25	4-101 - AUTHORITY BY GOVERNING BODY: The Governing Body may, by ordinance, after public hearing by the Planning Commission approve the establishment of a Planned Unit Development District on any parcel or tract of land which is suitable to be planned as a unit for development or redevelopment in a manner consistent with the intent and purpose of these regulations.	75	B. The Planned Unit Development will not substantially injure or damage the use, value and enjoyment of surrounding property nor hinder or prevent the development of surrounding property in accordance with the land use plan.
30	4-102 - TYPE OF PLANNED UNIT DEVELOPMENT. Planned unit development districts may be established for (1) residential; (2) office and commercial; (3) industrial; or (4) any combination of the above uses along with such other uses that are planned primarily to supplement each other.	80	C. The Governing Body and the Wichita-Sedgwick County Metropolitan Area Planning Commission shall determine that the Planned Unit Development is in reasonable compliance with the intent and purpose of the Comprehensive Plan.
35	A. A development shall be deemed to be a residential planned unit development when it is limited to dwelling units (attached, detached, semi-attached or groups of attached, or clustered or multi-stories structures or any combination thereof), and non-residential uses of a religious, cultural and recreational character that are primarily designed and intended to serve the residents of the residential planned unit development.	85	D. The developer shall have professional staff within his organization, or have contracted with consultants architects, engineers, realtors, and economists capable of carrying out all phases of the project. The developer shall also show evidence of financial capabilities to reasonably assure success and completion of the project. This may be in the form of financial statements, lines of credit and evidence of satisfactorily completed development projects.
40	B. A development shall be deemed to be an office and commercial planned unit development when it is limited to commercial uses such as shopping centers,	90	
45		95	ARTICLE 5 STANDARDS, CONDITIONS AND CRITERIA FOR PLANNED UNIT DEVELOPMENTS
50		100	5-101 MINIMUM SIZE: The minimum size for planned unit developments shall be listed for each type of planned unit development. However, if a landowner can demonstrate, due to unusual topographical conditions or limitations of access, that

1	planned unit development would be in the best interest of the public, these minimums may be reduced 50%. Areas shall be contiguous except as may be separated by public roads. (A) Residential Planned Unit Development - 4 acres.	51	The Planning Commission shall indicate the need for such design review at the time the preliminary plan approval is given. Such design shall be submitted to the Planning Commission at the final stage or at a time and date the Planning Commission shall designate. In lieu of such design, the developer may submit covenants or other forms of design control devices to insure compliance with these regulations.
5	(B) Office and Commercial Planned Unit Development - 10 acres. (C) Industrial Planned Unit Development - 40 acres. (D) General Planned Unit Development - 600 acres.	55	
10	5-102 PERMITTED USES. The uses within a planned unit development shall be limited for each type of planned unit development. (A) Residential Planned Unit Development (1) Dwellings (2) Public and Institutional uses (3) Recreational uses	60	5-104 LAND USE MIX FOR A GENERAL PLANNED UNIT DEVELOPMENT In order to achieve a balance within the development of uses providing housing, employment and recreation, and lessen the dependency on automobile travel for their needs and to provide living and working area having the qualities of a self-sustaining community, the following mix of land shall be adhered to: (A) Residential development shall not exceed 75 percent of
15	(4) Temporary uses necessary for construction purposes (5) Accessory uses (B) Office and Commercial Planned Unit Development (1) Regional facilities, including office complexes, shopping center	65	the total area of the PUD. Not over 75 percent of such residential area shall be for single-family detached residences nor shall more than 80 percent of such area be developed for single-family attached or multiple-family residences.
20	(2) Housing support facilities, including professional and personal services, comparison and convenience shopping (3) Public and Institutional Uses (4) Commercial recreation uses, providing such uses are within an enclosed building	70	(B) Business and industrial areas shall not exceed 40 percent of the total development area. (C) Open Space-Recreational (public or private) areas shall be included, having an area equal to at least 10 percent of the non-business and industrial area.
25	(5) Temporary uses necessary for construction purposes (6) Accessory uses (C) Industrial Planned Unit Development (1) Manufacturing, processing and fabrication, ware-	75	(D) School and airport land areas shall not be included in making the computation of percentages in Items (A) through (C) above. Other land areas may be excluded on a showing that such inclusion would destroy the intent to achieve a balanced mix of uses.
30	housing and other employment centers when specified and approved in the plan. (2) Transportation facilities, including airports, mass transit, bus or rail terminals, and trucking or freight terminals.	80	5-105 RESIDENTIAL DENSITY. (A) The residential density of a General Planned Unit Development shall not exceed 9 dwelling units per gross acre of the development, based on all land devoted to housing and the open space and recreational areas provided for the benefits of the occupants.
35	(3) Commercial Recreational Uses. (4) Temporary uses when approved by the Director of Planning, such as: (a) Sand and Gravel Extraction (b) Nursery; (c) Asphalt and Concrete plants used in highway construction.	85	(B) The residential density of a Residential Planned Unit Development shall be determined by the Planning Commission based on the impact the development will have on the community. Consideration shall be given to
40	(5) Temporary uses necessary for construction purposes (6) Accessory Uses. (D) General Planned Unit Development. Any uses permitted by (A), (B), or (C), but with a land use mix as set forth in these regulations.	90	open space, the amount of traffic generated, water consumption, waste water generated, and storm drainage. The residential density of the development shall also be deemed to be compatible with adjacent properties and be in general conformity to the comprehensive plan.
45	5-103 USE LIMITATIONS: All uses not within enclosed structures shall be designated on the plans and shall be subject to additional design review. These may include location, intensity, screening, and landscaping as may be deemed appropriate to protect the integrity of the PUD and areas adjacent thereto.	95	5-106 LAND INTENSITY CONTROLS. (A) Ground Coverage. Maximum ground coverage per parcel shall not exceed: (1) 50 percent for housing, except attached single-family may be 100 percent.
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	(2) 40 percent for office and commercial. (3) 67 percent for industrial For purposes of the above computation, parcels shall not include common open space areas.	51	the integrity of a development, and when deemed necessary to provide protection to the adjacent properties, the planning commission may require landscaped areas and screening as a part of a planned unit development. The planning commission may determine the most appropriate type and location of screening deemed necessary to protect adjacent properties.
5	(a) Floor area ratio. The maximum allowable floor area ratio shall be: (1) .5 for single and two family detached dwellings (2) 3.0 for single-family attached dwelling (3) 1.0 for multiple dwellings (4) .5 for offices and commercial (5) 2.5 for industrial.	55	Prior to the issuance of any building permit within a parcel of a PUD, a screening and landscaping plan shall be submitted to the Director of Planning for approval. Landscape plans shall show the location, species (botanical and common name) of plant material, and the quality (size-age) of all plant material. Screening plans shall include typical details of fences, berms and plant material to be used.
10	(C) Building heights. There shall be no maximum building heights except as may be determined by the Planning Commission during the review of the preliminary plan based on the uses within the development and the proximity of the development to existing or prospective development on adjacent properties. Building height within a planned unit development may differ from parcel to parcel, but in no instance shall building heights within a parcel exceed the height generally permitted for similar uses within the conventional zoning district wherein the use would normally be located. A lesser height may be established by the Planning Commission when it is deemed appropriate to provide adequate light and air to adjacent property and to protect the visual quality of the community.	60	5-109 SIGNS: (A) Signs within a Residential PUD, or signs within any parcel of a PUD that is limited to residential uses, shall be restricted to on-site signs generally permitted in any zoning district, and to identification signs for apartment complexes; providing, however, identification signs for apartment complexes shall not exceed a height of twenty feet, a gross surface area of sixteen square feet and be limited to indirect or internal illumination of white light only. (B) Signs within an Office and Commercial PUD, or signs within a parcel of a PUD that is limited to office and commercial uses, shall be restricted to on-site signs generally permitted in any zoning district, and to on-site signs permitted in the B-2 Community retail district. (C) Signs within an Industrial PUD, or signs within a parcel of a PUD that is limited to industrial and related uses, shall be restricted to on-site signs permitted in any zoning district, and to on-site signs permitted in the M-1 Light Manufacturing district; provided, however, off-site signs used to provide direction to uses or activities within the PUD may be permitted if a plan is submitted, along with the final development plan, showing the height, area, number and location of signs. Approval shall be based on whether such signs would be permitted under the general provisions of the M-2 General manufacturing district. (D) Whenever signs, designed as permanent markers, for the convenience of the public in identifying streets or portions of a PUD, a plan shall be submitted, along with the final development plan, showing the height, area, lighting and location of each sign. The markers shall be determined to be in keeping with the general design of the area and the height, lighting and area shall be dependent upon the location of the signs on the property.
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25	5-107 OFF-STREET PARKING AND LOADING: The off-street parking and loading requirements for all uses, other than for dwellings, shall be the same as is required for such uses under the general zoning regulations.	75	
30	(A) Off-street parking for residential uses shall be as follows: (1) Single family (detached and attached) if less than 4 bedroom - 2 spaces/dwelling (2) Single family (detached and attached) with 4 or more bedrooms - 3 spaces/dwelling (3) Multiple family dwellings - 1.5 spaces/dwelling (4) Housing for the elderly - .5 spaces/dwelling (B) Off-street parking may be altered from the above requirements as part of the preliminary plan approval, provided however, that detailed information and justification for reduction within the proposed development is submitted as part of the preliminary plan.	80	
35	(C) Off-street parking areas within the development having 8 or more spaces shall provide landscaped areas distributed, as much as practical, throughout the parking areas. Typical layouts of the landscaped parking areas shall be submitted as part of the preliminary plan.	85	
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50	5-108 - LANDSCAPE AND SCREENING PLANS: In order to protect	100	

1	5-110 ARCHITECTURAL CONTROLS: In order to protect the integrity of PUD development areas, consideration shall be given to the architectural design of rooftop projections and to roof-scape design. Architectural treatment shall be provided for all rooftop projections exceeding a height of four feet. Such projections shall become an integral part of the building design when viewed from ground level.	51	a preliminary development plan. The preliminary development plan shall be in the following form and contain the following documents and information:
5	Whenever a PUD will permit a building height of 65 feet or more, consideration shall be given to the design and roofscape treatment of all roofs that are within 660 feet of that portion of a PUD and within the PUD. Prior to the issuance of any building permit within any parcel of a PUD requiring roofscape treatment, a roofscape plan shall be submitted to the Director of Planning for approval. Such plan shall include typical design treatment of roofs as viewed from above.	55	A. A regional location map identifying the site and its inter-relationship with the community. The graphic scale shall not be less than 1" equals 2000 feet.
10		60	B. A current abstractors certificate listing the names, mailing addresses and zip codes of the owners of all property included in the application for the planned unit development district and all property within the distance measurement established by the planning commission for a change of zoning.
15		65	C. A land restriction map identifying all land as undevelopable or restricted land.
20	5-111 COVENANTS, TRUSTS, HOMES ASSOCIATION: To provide for control, operation, construction and maintenance of private roads, parking areas, common open space, community facilities, recreation areas, buildings, lighting, security measures and other similar items, the developer may create such legal entities as appropriate to undertake and be responsible therefor. These might be homes association, community trusts, implemented by agreements, contracts and covenants.	70	(1) Undevelopable land shall include all land subject to periodic flooding, or the 100-year flood when delineated; or shall have a slope greater than 25% with a soil condition subject to erosion.
25		75	(2) Restricted land shall be either land with established vegetation subject to desirable preservation; land designated as historical and subject to further regulation; land proposed for public capital improvements; or land designated as a scenic area. These conditions must be based on an interpretation of the Comprehensive Plan, Capital Improvement Program, or other documents on file and approved by the Governing Body.
30	ARTICLE 6 PROCEDURE FOR SECURING APPROVAL OF A PLANNED UNIT DEVELOPMENT DISTRICT 6 6-101 REQUIRED PROCEDURE: The approval of any Planned Unit Development District shall be considered in three phases. A pre-application conference with the staff of the planning department; a preliminary plan approval of the entire development area; and final plan approval on all, or portions of the portion of the PUD.	80	(3) Undevelopable land may be used to meet open space requirements. Restricted land may be used in determining the number of acres suitable for development, but its use for buildings may be restricted by reasonable conditions deemed appropriate by the Governing Body.
35		85	D. A preliminary development plan identifying all proposed land use to such detail as to identify the nature, character and intensity of use of the development. This shall include the following:
40	6-102 PRE-APPLICATION CONFERENCE: Before submitting an application for any planned unit development, the landowner or his authorized representative shall confer with an assigned staff member of the Wichita-Sedgwick County Metropolitan Area Planning Department.	90	(1) The location, type of streets by functional class, and the relation of such streets with adjacent streets and platting patterns.
45	Information shall be submitted in schematic or written form, of sufficient detail to show general conformance to the comprehensive plan and to the requirements for a planned unit development district. This conference would also provide information and guidance to the landowner prior to incurring substantial expense in the preparation of plans, surveys and other data required in a preliminary development plan.	95	(2) The location of parking areas, including typical examples of providing adequate off-site parking in residential areas.
50	6-103 PRELIMINARY DEVELOPMENT PLAN: A developer seeking the establishment of a planned unit development district shall prepare and submit to the Secretary of the Planning Commission	100	(3) The location and size of all public utility easements necessary to serve all individual properties within the PUD, along with an example of the method of placement of utilities within the easements.
			(4) The location of all natural drainage swales, streams, retention basins, ponds, culverts, dams

	and storm water drainage system.	51	submitted showing how the development will be stag-
5	(5) The location of open space and that to be used for community facilities and designate whether such is to be public, privately owned, or maintained and controlled by an owner's association. This shall	55	ed both in respect to construction and sales or rentals. Also a schedule of the construction of public improvements will coincide with private development.
10	include all common use areas such as; trails, tot lots, play and athletic fields and other outdoor recreational areas; buildings used for community, school, religious or institutional uses; existing buildings, historical areas or scenic areas	60	F. Submission of a preliminary development plan shall be in the same fashion as a request for any change in zoning, except that the plan shall be reviewed by subcommittees established by the planning commission prior to the formal hearing before the Planning Commission. Within 30 days after the public hearing, the Planning Commission shall submit its recommendation to the Governing Body.
15	(6) The location and type of land uses, to be developed within the PUD. This shall include the number and type of residential dwellings within each parcel;	65	G. Prior to granting approval, the Governing body shall make such findings of fact as may be required by these regulations. After approval by the Governing Body the landowner shall file with the register of deeds a statement that such plan has been filed with the Planning Commission and has been approved and that such planned unit development is applicable to all land
20	E. Report submissions supporting the preliminary plan shall be summarized in text and shall include the following:	70	legally described therein, and that copies of the plan are on file in the office of the Secretary of the Planning Commission and the Clerk of the Governing Body. Such statement recorded with the Register of Deeds shall also specify the nature of the plan, the proposed density or intensity of land uses and other pertinent information sufficient to notify any prospective purchasers or users of the land of the existence of the plan.
25	(1) An evaluation of the natural limitations affecting the site and how these were incorporated in the development plan.	75	The recorded statement shall specify that the preliminary development plan shall become binding upon all successors and assigns unless amended as required by these regulations. The Secretary of the Planning Commission shall cause to be published a legal description of all land included within the plan and thereby establishing the Planned Unit Development District in the same manner as required for conventional zoning districts.
30	(2) A population and economic impact evaluation showing the projected population, projected work force, probable employment by location, and when applicable the estimated employment to be created by the development.	80	H. In the event that a plan is given preliminary plan approval and thereafter the landowner decides to
35	(3) A public impact evaluation showing the probable impact upon public services, showing those services which will need to be expanded, enlarged or otherwise improved to service the development.	85	abandon the plan or any portion thereof, he shall notify the municipality in writing; or in the event the landowner shall fail to submit final plans for approval on all or portions thereof within six months of the schedule as set forth in the preliminary plan approval; then the planning commission shall notify the landowner that a hearing will be held in accordance with the established procedure to change the zoning to an appropriate conventional zoning classification.
40	(4) A traffic impact evaluation showing the probable impact resulting from the development; including the projected number of motor vehicular trips to enter and depart the site for an average day and peak hour; the projected impact the traffic will have on existing streets; and an analysis of the proposed improvements that will be necessary to all roads.	90	
45	(5) A utilities impact evaluation shall be provided showing the daily and peak hour demands for water, sewage disposal and storm water drainage.	95	
50	(6) An analysis of common open space and how much space will be maintained and how such cost will be assessed to the development. (7) If the development of the site will take place over more than one year, a development schedule shall be	100	

1	6-104 FINAL DEVELOPMENT PLAN: Before any occupancy or building permit shall be issued, or before any development of land shall take place, a final development plan shall be submitted for approval. Such plan may be submitted for all of the land included within the planned unit development district, or for portions thereof as submitted in the development schedule as part of the preliminary development plan.	51	Authority shall occur within forty-five days of the filing of the plan; provided, however, if the plan as submitted contains variations from the previously approved preliminary development plan, the approving authority may, after meeting with the landowner, refuse to grant final approval and shall so advise the landowner in writing of said refusal, setting forth the reasons such variations are not in the public interest. The landowner may either treat the refusal as a denial of final approval and resubmit the final plan in accordance with the request of the approving authority, or the landowner may notify the approving authority within forty-five days of notice of the date of refusal, his or her notice to appeal the decision of the approving authority. In the event such an appeal is filed, the approving authority shall schedule a public hearing before the planning commission, giving the same notice as is required for preliminary plan approval. After the public hearing by the planning commission and in the event the landowner is not in agreement with the decision of the planning commission, the landowner may request within thirty days that the application for final plan approval be submitted to the governing body for final decision. Any reason for disapproval of the final development plan by the planning commission or the governing body shall be set forth in full.
5	A. A final development plan shall include a detailed site plan combined with such easements and dedications parcel identifications, conditions and form of performance bond, restrictive covenants or association agreements as required by the preliminary development plan. The final development plan, upon the recording of the plan with the register of deeds, shall constitute the effective dedication of easements, rights-of-way, access control and the equivalent of and alternate for the platting of land. This will require the final development plan to be in a form comparable to the requirements of a final plat as set forth in the "Sub-division Regulations of the Wichita-Sedgwick County Metropolitan Area Planning Commission" and contain the recitation and signatures necessary for the effective dedication of easements, rights-of-way, access control and all other public requirements set forth by the governing body.	55	
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30	B. The final development plan shall be deemed to be in substantial compliance with the preliminary development plan provided the plan does not:	80	D. A final plan or any part thereof which has been given final approval by the approving authority, or upon appeal to the planning commission or to the governing body, shall be so certified by the secretary of the planning commission. The landowner, upon obtaining the appropriate signatures on the final plan, shall be responsible for the plan to be filed of record with the register of deeds within thirty days. In the event that a plan or portion thereof is given final approval and thereafter the landowner decides to abandon the plan or portion thereof, he shall notify the municipality in writing; or in the event the landowner shall fail to commence the development within eighteen months after final approval has been granted, then in that event such final approval shall terminate and shall be deemed null and void unless such time period is extended by the governing body upon written application by the landowner.
35	(1) Vary the proposed gross residential density or intensity of use by more than five percent or involve a reduction in the area set aside for common open space, nor the substantial relocation of such area; nor	85	
40	(2) Increase by more than ten percent the floor area proposed for nonresidential use; nor	90	
45	(3) Increase by more than five percent the total ground area covered by buildings nor involve a change in the height of buildings exceeding ten percent.	95	
50	A public hearing need not be held to consider modifications on location and design of streets or facilities for water, storm water, sanitary sewers or other public facilities required as a tentative condition of approval of the preliminary development plan. The burden shall, nevertheless, be upon the landowner to show the approving authority good cause for any variation between the preliminary plan previously approved and the final plan submitted for approval.	100	E. The approving authority for a final development plan shall be the "Director of the Wichita-Sedgwick County Metropolitan Area Planning Commission" or his designated representative.

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ARTICLE 7		51	granted solely to confer a special benefit upon any person.
	ENFORCEMENT AND MODIFICATION OF PROVISIONS OF THE PLANNED UNIT DEVELOPMENT		7-104 MODIFICATION BY THE RESIDENTS: Residents and owners of the planned unit development may to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove or release their rights to enforce the provisions of the plan, but no such action shall affect the right of the municipality to enforce the provisions of the plan in accordance with the provisions of Section 7-101.
5	7-101 ENFORCEMENT BY THE MUNICIPALITY: The provisions of the plan relating to:	55	
	(1) the use of land and the use, bulk and location of building and structures.		
	(2) the quality and location of common open space, except as provided in K.S.A. 12-228, and	60	
10	(3) the intensity of use or the density of residential units, shall run in favor of the municipality and shall be enforceable in law or in equity by the municipality without limitation on any powers or regulation otherwise granted the municipality by law.	65	ARTICLE 8 REQUIRED FEES 8-101 APPLICATION FEES: The following fees are established as the minimum required with an application. A. PRE-APPLICATION CONFERENCE - NO FEE B. PRELIMINARY DEVELOPMENT PLAN - \$400 + \$10/Acre (New Application) Maximum \$10,000 C. FINAL DEVELOPMENT PLAN - NO FEE (All or Portion) D. REVISION TO DEVELOPMENT PLAN - (Up to Ten Acres) \$400 (Over Ten Acres) \$400 + \$10/Acre E. APPEAL OF REFUSAL OF FINAL PLAN BY APPROVING AUTHORITY \$100 (refundable if approved)
15	7-102 ENFORCEMENT BY THE RESIDENTS AND OWNERS: All provisions of the plan shall run in favor of the residents and owners of the planned community, but only to the extent expressly provided in the plan and in accordance with the terms of the plan and to that extent said provisions, whether recorded by	70	
20	plat, covenant, easement or otherwise, may be enforced at law or equity by said residents and owners, acting individually, jointly, or through an organization designated in the plan to act on their behalf. No provisions of the plan shall be implied to exist in favor of residents and owners of the planned	75	
25	unit development except as to those portions of the plan which have been finally approved and have been recorded.		
30	7-103 MODIFICATION OF THE PLAN BY THE MUNICIPALITY: All those provisions of the plan authorized to be enforced by the municipality under 7-101 of this section may be modified,	80	
35	removed or released by the municipality (except grants or easements relating to the service or equipment of a public utility unless expressly consented to by the public utility), subject to the following conditions:	85	
40	A. No such modification, removal or release of the provisions of the plan by the municipality shall affect the rights of the residents and owners of planned unit development to maintain and enforce those provisions, at law or equity, as provided in 7-102 of this section.	90	
45	B. No modification, removal or release of the provisions of the plan by the municipality shall be permitted except upon a finding by the municipal authority, following a public hearing called and held in accordance with the provisions of Section 6-104(D) that the same is consistent with the efficient development and preservation of the entire planned unit development, does not adversely affect either the enjoyment of land abutting upon or across a street from the planned	95	
50	unit development or the public interest, and is not	100	

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THE CITY OF WICHITA

OFFICE OF Central Inspection Division
Department of Public Works

DATE February 3, 1978

TO Robert Lakin, Director of Planning

FROM Robert B. Feldner, Superintendent of Central Inspection

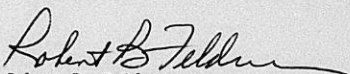
SUBJECT C.U.P. - Aesthetic Controls
Design Consideration and
Approval Process

A brief review of your draft document, titled as above, is just completed and the following comments are provided.

At the present time Central Inspection finds little philosophical fault with the basic concept projected in the draft document and generally concurs with the recommendations made. As you know, we are proceeding in some of these directions at the present time. No major administrative problems are anticipated, assuming that the recommendations are followed. Some of the options not recommended appear to be administrative quagmires and very nearly unenforceable.

We are in agreement that the majority of the techniques listed in Appendix A are not adaptable to Wichita and view them, as with most aesthetic controls of that nature, to be riddled with a multitude of problems.

As previously stated, these comments are based upon our preliminary review. Additional detailed comments will be provided as our in-depth analysis is brought to completion.


Robert B. Feldner
Superintendent of Central Inspection

/ml

cc: R. W. Bruggeman, Director of Public Works



THE CITY OF WICHITA
OFFICE OF

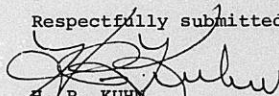
DATE February 2, 1978

TO ROBERT A. LAKIN, DIRECTOR OF PLANNING
FROM H. R. KUHN, ASSISTANT CITY ATTORNEY

SUBJECT C.U.P. - Aesthetic Control,
Design Consideration and
Approval Process

In accordance with your request, the Department of Law has reviewed your proposed draft of the paper to be submitted to the Board of City Commissioners on C.U.P. problems. It is my opinion that you have very capably presented in capsule form the problems and the alternate solutions of some of the problems. I can think of nothing to add to what you have stated -- your analysis of the applicable law is correct. I don't feel qualified to anticipate the relative costs of the administration of the several alternate approaches but it seems obvious that considerable costs can be incurred if the governing body decides to exercise stringent controls.

Respectfully submitted,



H. R. KUHN
ASSISTANT CITY ATTORNEY

HRK:mb
cc: John Dekker



Reels
Create a D12 file.

D R A F T

Board of City Commissioners

Robert A. Lakin, Director of Planning

C.U.P.'s - Aesthetic Control, Design Consideration and Approval Process.

The Problem - As stated by the Commission, many of the city's larger developments look terrible. This is expressed as dissatisfaction with a number of items. Included in these concerns is architectural style, divergence or use of several architectural themes on the same "project"; the creation of multiple structures when a "center" was promised; automobile parking unbroken by interior site landscaping; lack of continuity in sign graphics both on faces of buildings or for street area signs; the extent or lack of landscaping/screening approved and installed; the care and maintenance of landscaping, walls and fencing; and the failure to build what was promised. There may be more items. Some are more significant than others. Commissioners, staff and public also have different perceptions as to what is good design and what is not.

Another problem has been enforcement of C.U.P. conditions through^{out} the construction stage and particularly after occupancy of the project. As^{to} the latter condition, maintenance of plantings and walls as well as unauthorized modifications have been a problem.

On July 26 1977, the City Commission directed the administrative staff to develop proposals for the control of aesthetics of construction and the methods of enforcement to assure that developments are built in such a way as to be compatible with the surrounding neighborhood.

Development of C.U.P. provisions in Wichita

The evaluation of design approval of larger tracts in Wichita has swung from a precise and demanding set of requirements to a very loose set of provisions now contained in the ordinance. In the 1950's, the Planning Commission, staff and City Commission recognized that large scale developments such as shopping centers created special community and area problems which should be dealt with as a condition of development approval. To obtain approval for a shopping center, a precise site plan including specific building size and location was required. Also, an economic justification or feasibility study, a traffic study and plan, and a landscape plan was required. Also a specific time schedule for development was required. When approved by the Board of City Commissioners, all plans and requirements were filed with the Register of Deeds.

Revised
~~Detail level~~ *By proposals to the detailed outlined above and* approvals given before leases were signed proved to be too confining. Building areas changed with leases, new design concepts developed and economic conditions changed. When the owner of Towne East first obtained their zoning (160+ A) (not the current owner or developer) they requested

and obtained a complete change in procedure for C.U.P. approvals.
This was to gain "flexibility" so they could look for a developer. Those changes
~~which~~ resulted in the regulations we use today. *requested*

These regulations now deal only in generalities, super setbacks, curb cuts, landscape at the edges and a limitation on uses (often not too limited; many read "uses as permitted in LC") and maximum bulk controls (floor area ground coverage, etc.). The latter usually far exceed the market potential and are in essence, ^{little or} no control at all.

A basic problem is that shopping centers and large apartment projects are never really put together until after zoning is obtained. The process is largely one involving speculation. This is not wrong, but answers to problems identified above are not easily solved until the project firms up or unless the developer puts substantial predesign money into the project. Most applicants asking for such zoning have not been willing to do this and to date, neither the Planning Commission nor City Commission have made this a requirement for presenting applications and receiving approval.

Pursuant to the directive of the City Commission, members of my staff have researched existing ordinances in other cities to determine the ~~most efficient and economical~~ ^{what} methods ^{are used} to assure development which is both architecturally compatible with the neighborhood, ~~yet will not unduly generate more "red tape"~~.

A major problem in Wichita has been with large scale commercial developments which are originally proposed as an integrated unit, which are later developed on a parcel by parcel basis by different owners and builders. When looked at on an individual basis, the uses/buildings may well be aesthetically pleasing, yet when viewed in total, form a visual hodgepodge of unrelated architectural styles. Conflicts in site design also occur (~~primarily in~~ ~~access~~ ^{additional} curb cuts wanted, internal ^{site} traffic circulation ~~and congestion~~ and poorly laid out off street parking). The problem is further complicated by franchise ^{or chain} operations which have their own individual design standards and site development plans which are duplicated in every location across the county without regard for the individual setting. ^{Many chains however have found ways to cope} One example of ^{with being} development which has quality building on an individual basis, ^{a part of the} ~~however~~, is an architectural mismatch in total, is the Cobblestone Alley development on the southeast corner of Central and Rock Road. Originally conceived (and sold to the public, MAPC, and Board of City Commissioners as an integrated development of quaint shops with an architectural blend, financing problems led to an individual parcel sell off with such divergency in architecture from the colonial style Ethan Allen furniture store to the modern theaters located on the site. Even the architecturally integrated and pleasing Towne East Square development has the individual franchise restaurant operation, Sambo's, which appears totally out of place with the surrounding development.

(at least to this writer)

~~Handwritten P.U.D.~~
Planned Unit Developments

These situations arise, as I see it, from a lack of adequate feasibility studies by the applicant; the lack of expertise by the developer in going from conversion of raw land to developed parcel; and/or deficiencies in our Community Unit Plan regulations. This fact has been recognized by the staff for some time and accordingly, considerable effort has been expended in development of a three phase P.U.D. (Planned Unit Development) ordinance which is modeled after the recommendations of the American Society of Planning Officials and has been successfully employed in other major cities across the nation over the past ten to twenty years. This P.U.D. provision has been incorporated into the proposed zoning ordinance ^{originally} as an optional device and will be considered along with the proposed ordinance in public hearings slated for spring of 1978. *The redrafts of the ordinance may propose sites over "x" areas be required to submit a P.U.D.*

luck; economic conditions;

Proposed ordinance

The Planned Unit Development (P.U.D.) District is not located on the zoning map per se, but specific parcels would be designated only after application by the developer and approval by a "designated public body" as a zone change to the P.U.D. district. The essence of the P.U.D. combines the traditional idea of zoning, e.g., regulation of use, height, bulk and improvements with subdivision techniques of lotting arrangements and guarantee of public improvements. Fundamental to the P.U.D. process is the site plan review with three principal actors -- the developer, the public review authority represented by staff, planning commission and governing body, and those people who reside in the area of the proposed development.

* The statutes provide that a "designated public body" can be the governing body, planning commission, staff person, hearing officer, etc.

The American Society of Planning Officials has recommended a three stage review process:

- 1) a preapplication conference - usually with staff to discuss concepts, policies and standards
- 2) a preliminary plan submitted for public hearing and containing the general uses, specific use limitations, setbacks, internal circulation patterns (vehicular and pedestrian) and general arrangement of buildings, open space, landscape areas, buffer areas (and techniques), controlling standards such as residential density, number of units or commercial controls (floor area, etc.) and parking standards
- 3) a final development plan which contains the design specifics of the preliminary development plan in their final form. A detailed site plan shall be included in the final development plan. However color, materials, texture and architectural style as indicated by building elevations are not normally part of the ordinance requirements.

revised

Inherent in the three stage process is the timing element. The preliminary plan shall be approved for a specific period of time, with final plan submission required in a given time frame, and failure to build with^m a certain period after final plan approval shall constitute termination of the approval

unless an extension is granted by the governing body. Thus, the overall development is tied to an integrated specific proposal with development occurring in a specified way within a specified time.

Alternate Approaches to Design Control

We have reviewed the ^{other} commonly used design control techniques and have described those activities in Appendix A. Few, if any of these techniques appear to be adaptable to Wichita.

Aesthetic Control in Wichita

Although Wichita may not have had the specific type of architectural controls discussed in the appendix, several types of such control have been in existence.

- A) Urban Renewal Projects - the Urban Renewal Board considers specific redevelopment projects with the building and architectural plans approved in conjunction with the project. Plan modification requires Board approval and City Commission approval.
- B) Aesthetic Type Ordinances - sign controls and screening and landscaping provisions are found within the current zoning ordinance.

C) Historic Landmark Preservation Districts - the Historic Landmark Preservation Committee reviews architectural plans for exterior improvements of designated landmarks or structures located within a designated historical district.

D) Private Covenants - although not enforceable by governmental bodies, many existing subdivisions have private covenants which require architectural review of building plans by a designated body (Rockwood, Benjamin Hills et al) with standards for style, height, etc.

E) Previous attempts to require architectural integrity on C.U.P.'s - Two C.U.P.'s which have been approved in Wichita contain some form of architectural reference;

to design control

- 1) Comotara C.U.P., (revised DP-46) contains a statement on the Commercial Parcel as follows: "Architectural Control of all Buildings will be consistent through total commercial office areas". The language was included by the developer and not as a requirement by the City. The statement is fairly open ended and contains no specific standards of what constitutes "consistent" or "architectural control". It will be pretty much to the discretion of the plans examiner in the Office of Central Inspection to determine what these terms mean.

*Commercial case
Eric Woodbury
1/4 mi N of 21st*

2) University Gardens, (revised CP-8) C.U.P. required:

DP
NE Cor 21st & Oliver
"the buildings on parcels 8, 10, and 11 shall be designed and constructed as an integrated shopping center structure. Each building shall be attached to the other by means of a common wall or walls resulting in a single continuous structure..."

"Integrated" as used in the discussion of C.U.P. approval appeared to relate to a structure having common walls and central location as opposed to Cobblestone which developed as a series of separate (as opposed to integrated) buildings. Language or direction of design exterior as to color, texture, type of material or architectural style was not interpreted to be part of the word "integrated". As interpreted by the Office of Central Inspection the similar architectural detail on the decorative awnings also contributes to an integrated shopping center although the K-Mart and Dillons buildings are somewhat dissimilar in appearance. The lack of specific design standards puts the permit issuance authority at a disadvantage in determining exactly what is required. However, it should be recognized that to write design standards is quite difficult even if deemed desirable.

Alternates for Wichita

Appendix A contains a general discussion of aesthetic controls as well as an examination of techniques used in other parts of the country.

If the definition of the problem in Wichita, e.g., the development of large commercial areas unrelated in appearance either to the surrounding area or to each other ^{is} ~~are~~ the main problem^s, certain of the non-applicable techniques can be discarded. Anti look-alike ordinances do not address the issue; development incentives for site plan review are not possible under the present zoning ordinance unless the high level of existing rights in the ordinance are reduced to make incentives more attractive; and special regulations and historic districts don't address the problem. *Of the remaining control techniques, the* ~~the~~ ^{of} site design review board ^{and} ~~and~~ city design commission would require large increases in city staff, ~~as well as requiring some fundamental changes in existing departments.~~ Should the Commission seek to explore these techniques further, it is suggested that the Department of Law prepare an analysis of the legal issues involved and that the Department of Public Works prepare some preliminary cost estimates for increased staff needs. An advisory committee representing developer interests and local architects should also be consulted on the subject.

Alternate A - Add PUD ordinance procedures.

As an alternative to the above ^{method}, it is recommended that the three stage approval process for Planned Unit Development ^{be accepted} ~~as proposed~~ ^{as} ~~in the new zoning ordinance is~~ the most efficient and economical way to address the problem in Wichita. This involves the substantial upgrading of the existing C.U.P. process. The primary

advantage is one of cost. No increase in staff would be required and, in addition, the neighborhood or surrounding area would have ^{more of} a voice in the plan development during the public hearing process. ^(See Attachment B)
The P.U.D. Ordinance as contained in the proposed zoning ordinance may need further clarification to embody specific design review areas. Certainly additional changes will be needed if the Commission wishes to add the areas of building architectural review. Should the Commission desire to move in this manner, staff should be instructed to make those changes prior to the public hearings on the proposed zoning ordinance.

If the direction is to the P.U.D. process, a determination must be made as to who is to be the "local administrative authority" to carry out the P.U.D. approval. This can be retained by the governing body, or delegated, such as to the MAPC or specific staff or a combination thereof. Much of the review and approval process seems to be administrative in nature. Retention ^{of non-policy areas} by the Board of City Commissioners will further increase its work load. However, if the rather subjective area of "good design" is to be satisfactorily resolved, final approval authority should probably be retained by the City Commission. ^{*} A procedure to allow for administrative adjustments by the staff with monthly reports to the City Commission as to action taken could be initiated. Preliminary P.U.D. approval could be by Board of City Commissioners through MAPC (like existing C.U.P. approval). Final plan approval could be by MAPC with appeal to Board of City Commissioners. [✓] Specific proposals as to procedures could be brought to the Board of

* The following is one suggestion as to how the process might work.

City Commissioners when zoning ordinance amendments are submitted. However, the staff would like to have an indication as to the degree of involvement to which the Board of City Commissioners would want to participate.

Alternate B - City Commission Policy on C.U.P.'s.

Another course of action is to immediately add additional conditions as a matter of policy on C.U.P.'s now gaining approval under the existing C.U.P. ordinance. Specific changes the Commission may wish to consider, include the following:

- 1) Require ^{feasibility study} ~~feasibility studies~~ as a condition of approval ^{on projects} ~~of projects~~
- 2) Establish time limits for ^{action} ~~action~~
- 3) Require detail planting/landscape ^{plans} ~~plans~~ to be submitted to Board of City Commissioners and MAPC at time of hearing and approval. Same for detail on Walls. Alternates to this would be to retain approval by the Director of Planning or (other agencies, such as Director of Parks, Director of Public Works, Superintendent of Central Inspection) combination thereof; or provide more specific direction as to the nature of the landscaping to be specified on the C.U.P., e.g., thick, deciduous to hide/screen a given view; hide cars on lots; provide attractive vertical ^{wall} ~~wall~~ with solid hedge material etc., plant groups or elements spaced every "X" feet; ground cover other than grass, used for screening, etc.

It would need to deal with quality of life issues re schools, recreation, drainage, open space, impact on other public facilities, services, traffic impacts, social impact & benefits, economic feasibility & impact on existing community development. A specific outline format should be developed for applicants to follow regarding their submissions.

applicant to do compact community impact study covering a community impact economic over a given size (10 Acres commercial, 15 acres residential). The impact study & starting the project and establish requirements as to the amount to be built (Example, main buildings before free standing buildings)

vertical

- 4) When landscape/screening using plant material is to be used, require underground watering systems or adequate number of ~~any~~ strategically located water outlets. This would also apply to (8) below if adopted.

- 5) Require an internal circulation plan approved by Traffic Engineering, at the time of MAPC and BCC hearing and approval. (Alternate ^{might in separate} approved by Board of City Commissioners ~~2 or~~ Traffic Commission ~~3~~, prior to building permit issuance.)

- 6) Require Traffic Studies when deemed appropriate.

- 7) Instruct Central Inspection Division to require fiscal guarantees for screening, walls, landscape and major entrances, irrigation systems (on-site improvements) when a building permit for main buildings (including free standing buildings) is issued and when the same is not included in the same construction contract.

- 8) Require parking lots or areas of parking lots having over 40 spaces to ^{have} landscaping ^{internal} provided to break up large expanses of asphalt.

Additional items the Commission may wish to consider, but which are not recommended due to problems discussed elsewhere in this paper are:

1) As a condition of C.U.P. approval, require that before building permits are issued, that the following be submitted to the Board of City Commissioners for review and approval.

a) Site plan including location of all buildings and detailed internal traffic circulation plan.

b) All buildings including type, elevation(s), color and texture of material.

c) Detail of all signs on building faces *design of all free standing signs*

Approval to be determined as to quality of design, compatibility as to blending with and being part of the adjoining and nearby development (both existing and planned) and environment, conformance to statements of intent by the developer, MAPC and BCC at the time of C.U.P. approval.

Alternate C - Enforcement.

A third set of options is related to enforcement. The following are a series of policy and or administrative acts to provide better enforcement. These have been jointly reviewed by MAPC and Public Works.

1) A check list be developed by the Central Inspection Department (plans examiner staff) for use by the field inspector.

This would be in addition to or an expansion of items normally checked regarding construction inspection.

Things that should be included are:

- a) fences or wall
 - b) landscape material (refer to separate plan - give reference phone to call for assistance, MAPD or Firsching); sprinkler or faucet installation for maintenance of plant materials
 - c) curb cuts
 - d) major entrance design and construction (reference to Traffic Engineering for assistance)
 - e) special drainage provisions (pond, lining, grade, etc.)
 - f) other special items which might be individual to the specific C.U.P.
- 2) The plans examination staff should keep a running total on each C.U.P. of the gross floor area, both on the total site and individual parcel basis. Any plans submitted on an existing C.U.P. site should specifically note all existing structures, their gross floor area, and G.F.A. (gross floor area) of the proposed structure.
- 3) No permits should be issued on any C.U.P. unless the entire site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.

- 4) No administrative adjustments on C.U.P.'s should be granted unless the total site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.
- 5) No occupancy permit shall be issued unless the required screening or landscaping, entrances (drives) and or other C.U.P. requirements have been installed or completed or unless they have been guaranteed to be put in by a specific date.
- 6) No improvements should be deferred until a later date unless sufficient guarantees (cash, letter of credit, etc.) have been made for the improvements.

Summary

It is recommended that:

- 1) The specific sub-elements in Alternate B be identified and stated as Board of City Commissioners policy for immediate implementation.
- 2) That the Commission approve in concept the three tier procedure for PUD, Alternate A, and indicate their initial (not binding) preference as to the degree of Board of City Commission involvement in approvals.

- 3) The Board of City Commissioners concur in Alternate C as to enforcement procedure.

- 4) Provide such other direction as deemed in the public interest.

Robert A. Lakin
Director of Planning

Appendix A

Background Information on Aesthetic Controls

Early efforts of design control is not a recent concept. It was used in the 19th Century to preserve the environment near public monuments of buildings of historic significance. Since then, municipalities have exercised such control to exclude construction that is out of character with other development in the area, to enhance an historical characteristic or theme within an area, and to prohibit or de-emphasize billboards, tall buildings, and other visual interference of scenic vistas and areas of natural beauty.

The first application of public architectural review to influence the appearance of new or reconstructed private buildings in the United States is generally credited to Santa Barbara, California. A 1925 ordinance established an architectural review board following an earthquake which destroyed a substantial number of structures on the principal business street. The board passed upon some 2,000 building permits over an eight month period and succeeded in having new construction proceed in the "Old California" style. The ordinance was then repealed.

Over the next few decades architectural controls were confined primarily to regulating "nuisance" type situations such as junkyards and billboards or in preserving areas of a unique

historic and architectural heritage as in the preservation of the French Quarter in New Orleans, Louisiana; the core area of Santa Fe, New Mexico, and the waterfront areas of Nantucket, Massachusetts.

Since the late 1950's however, other architectural or exterior design review boards have been established throughout the nation, with each board having varying degrees of power and responsibility.

Legal Considerations

As might be expected, design review boards and their relationship to aesthetics have been the subject of considerable legal discussion.

The regulation of appearance in historic preservation areas has by now received rather firm judicial acceptance. Beginning with the New Orleans cases stemming from the Vieux Carre provisions of the Louisiana Constitution and extending through advisory opinions in Massachusetts relating to preservation of Nantucket and Boston's Beacon Hill, the string of cases includes a 1964 decision by the New Mexico Supreme Court upholding rather detailed architectural regulations for the Historical District of Santa Fe (including a restriction against window panes more than 30 inches square).

The Oregon Supreme Court has sustained total exclusion of junkyards from a city solely on aesthetic grounds, the Pennsylvania Supreme Court has sustained the licensing of junkyards on the basis of aesthetic affect on the community, and the highest courts of both Washington and Kentucky have sustained requirements that junkyards be fenced or screened from highways. The New York Court of Appeals has upheld a prohibition against clotheslines in front yards and an intermediate court in New Jersey upheld a prohibition against parking of trailers outside a building; both cases in part decided on aesthetic grounds.

Both California and North Carolina have state enabling legislation which authorizes site and design review boards. The judicial history of architectural controls on structures and buildings has been rather spotty with cases in New York in the early twenties ruling that aesthetics alone were not a valid exercise of the police power yet aesthetic ends could be achieved by stretching the purpose of an aesthetic regulation to reach the orthodox components of the police power -- public health, safety, and morals. The California Courts generally invalidate restrictions on the use of private property for aesthetic purposes alone as an unconstitutional taking, yet have ruled that aesthetic purposes may be considered, as a part of the police power where other factors are found to exist. Kansas has also ruled as to the latter in *Ware vs. Wichita*. If aesthetic considerations are woven into validly enacted zoning ordinances which deal with other factors, the California Courts will tend to uphold them.

In summation, although the Courts are reluctant to use aesthetics as a sole determinant of exercise of the police power, the past few years have shown a marked tendency to uphold a regulation of aesthetics when they are reasonable and interwoven within other valid exercises of the police power.

Aesthetic or Architectural Controls Utilized in Cities across the Nation.

Architectural or aesthetic controls across the nation have taken many forms. However, they can be separated on a general basis among the following classifications.

A) Anti look-alike/must look-alike ordinances.

These types of regulations are most often found in affluent suburban communities which seek to regulate residential diversity either pro or con. The must look-alike regulations provide that residential structures must harmonize with other structures in the area if a certain percentage of the area or block is developed with residences of a similar architectural style. Conversely, anti look-alike ordinances prohibit in excess of a certain percentage of any block from having the same architectural style. Often the same municipalities have both types, e.g., ordinances employing the anti look-alike provisions in developing areas and the must look-alike provisions in established neighborhoods. Routinely, such ordinances are administered by building permit

officers on the basis of building plans submitted at the permit stage. Scarsdale, New York, Princeton Township, New Jersey, Arlington Heights and Lake Forest, Illinois, Barrington, Rhode Island, and South Euclid, Ohio, all have one or both of these types of ordinances. These types of regulations would appear to have little applicability to Wichita in that they are rarely found in larger cities, would require a large increase in building permit personnel, and do not address the primary problem in Wichita of architecturally regulating commercial uses.

B) Historic District Preservation

Regulates exterior architectural modification in designated historical sections of the city. The prime examples are found in the aforementioned areas of New Orleans, Santa Fe, Nantucket and Beacon Hill, as well as other cities of historical significance such as Savannah, Georgia. Wichita has the only historic landmark preservation ordinance in Kansas and embodies two historic districts as well as numerous individual historic structures. These types of ordinances are most often administered through design review boards although a few areas utilize the building permit officer with appeal to the governing body.

C) Regulations Affecting Specific Uses Such as Billboards, Junkyards, etc.

Most common type of aesthetic control although often established for purposes of health, safety and public welfare. Most cities in the United States have some form of this type of regulation and it is most often enforced at the permit level. The Wichita Zoning Ordinance has provisions regulating both signs and requiring screening of junkyards and salvage operations. The screening and landscaping provisions of the Zoning Ordinance also would be an example of aesthetic control.

D) Incentive Bonuses for Site Review

These types of ordinances are found in traditional zoning regulations whereby the bulk, height and density requirements are strictly defined with certain districts permitting a development bonus contingent upon the submission and approval of a development plan which also controls architectural style. The Rosslyn area of Arlington County, Virginia, is the most often cited example of this type of aesthetic control. The developer is granted bonuses both in terms of density and bulk in exchange for submission of definite site plans, including architectural review. The major prerequisite for this type of zoning incentive is that the existing zoning districts must be as strict as possible without constituting a taking of property. This makes the application of such techniques for architectural review almost unusable in Wichita, because the existing zoning districts are so lenient in terms of bulk, density and use (especially in the "B" Multiple Family and

Commercial Districts) that no one would ever need a bonus. Even the new zoning ordinance does not propose this degree of strictness.

Another problem is that such ordinances tread close to "contract zoning" which is generally assumed to be illegal in Kansas (except as expressly permitted by the PUD legislation). The ordinance can be structured so that site plan approval is technically a condition to be met in obtaining a building permit rather than a prerequisite for zoning.

E) Design and Site Review Required of All Building Permits

This is the most ambitious of all the architectural review controls and is generally found in smaller communities in California, Oregon and Colorado. The most widely cited of such regulations is found in Beaverton, Oregon, which established a five member Board of Design Review in 1971. No building permit may be issued without the review and approval of the Board as to site, sign, landscaping, and design plans. Only single family and duplex structures are exempt from such review. The Review Board is appointed by the mayor and representation of design and site development disciplines, as well as financial and business interests is required by ordinance. The standards for design review are contained in the ordinance and plans are reviewed by the Planning Staff for compliance prior to Board review.

The major problem with the application of design and site review of all plans in Wichita is that most of the communities which have such requirements are rather small and don't have a large volume of permit applications. (Beaverton only had 75 reviews in the first eighteen months.)

In Wichita, city staff would have to be increased tremendously to provide for adequate design review and the Board itself would be considering probably 30 to 50 applications at each meeting. Also, because of the interrelationship of lenders, architects, planners, and builders, those communities which have total design review have shown a tendency to apply the standard most stringently on "outside developers" while approving local builders plans in a more lenient way.

F) Overall City Design Commission

These types of ordinances differ from the preceding types in that Overall City Design Commissions do not concentrate on each individual building permit per se, but work to provide overall goals and objectives for the City regarding design, often with different areas of the City divided into different design districts.

Following an intensive "Goals for Dallas" program of a decade ago (which included specific objectives in terms of urban design), the City of Dallas created an urban design division

within a combined planning and development agency. A core staff of 20 specialists aid all other agencies, developers, and community groups in a continually expanding range of activities. The staff provides guidance for several major development, conservation, and ethnic community districts. Much work is done on city owned or controlled items, e.g., traffic signals, street light standards, other street furniture, street patterns and circulation, park locations and designs and historical theme conservation areas. Around the city are projects, districts, and corridors subject to new design concepts and guideline controls. Design review is performed on zoning changes in areas identified as special districts.

The City of Baltimore, Maryland has created a sophisticated design review and management system which is helping to improve design in the city. All publicly funded projects are reviewed by a design advisory panel which consists of architects and landscape architects. An ordinance provides that one percent of the cost of public projects be spent on works of art.

The City of Seattle established a municipal design commission in 1968 to act in an advisory capacity to the city council in connection with design aspects of all capital improvement projects.

The City of Portland, Oregon, has established an overlay zoning district, the "D" Design Zone, for the purpose of conserving and

enhancing the appearance of the city. Most often the "D" zone is applied to areas of scenic value, historical note, and architectural merit. A design committee of the City Planning Commission reviews all building permits in the "D" zone and has the authority to require changes in appearance of the building or land.

Kansas City, Missouri has general planned development districts. A general land use plan is approved for each district which includes specific land use control zones with urban design standards.

The overall city design commissions' functions range from merely approving the design of municipal funded projects to approving building plans of private developers in certain districts. These special districts tend to be areas of unique natural beauty, historical significance, or ethnic/cultural heritage centers. Although Wichita could attempt such aesthetic regulation (e.g., setting up a special "river corridor" to review plans in a special district adjacent to the Arkansas River), the overall city design commission is not a technique which would address the major problem in Wichita of large commercial activities designed on a piecemeal basis. It is certain that creation of an overall city design commission would increase staff expenditures substantially and such commissions need a consensus in establishing overall urban design goals and objectives.

D R A F T

Board of City Commissioners

Robert A. Lakin, Director of Planning

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Development of C.U.P. provisions in Wichita

The evaluation of design approval of larger tracts in Wichita has swung from a precise and demanding set of requirements to a very loose set of provisions now contained in the ordinance. In the 1950's, the Planning Commission, staff and City Commission recognized that large scale developments such as shopping centers created special community and area problems which should be dealt with as a condition of development approval. To obtain approval for a shopping center, a precise site plan including specific building size and location was required. Also, an economic justification or feasibility study a traffic study and plan; and a landscape plan was required. Also a specific time schedule for development was required. When approved by the Board of City Commissioners, all plans and requirements were filed with the Register of Deeds.

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A basic problem is that shopping centers and large apartment projects are never really put together until after zoning is obtained. The process is largely one involving speculation. This is not wrong, but answers to problems identified above are not easily solved until the project firms up or unless the developer puts substantial predesign money into the project. Most applicants asking for such zoning have not been willing to do this and to date, neither the Planning Commission nor City Commission have made this a requirement for presenting applications and receiving approval.

Pursuant to the directive of the City Commission, members of my staff have researched existing ordinances in other cities to determine the most efficient and economical methods to assure development which is both architecturally compatible with the neighborhood, yet will not unduly generate more "red tape".

A major problem in Wichita has been with large scale commercial developments which are originally proposed as an integrated unit, which are later developed on a parcel by parcel basis by different owners and builders. When looked at on an individual basis, the uses/buildings may well be aesthetically pleasing, yet when viewed in total, form a visual hodgepodge of unrelated architectural styles. Conflicts in site design also occur, primarily in access (additional curb cuts wanted, internal traffic circulation and congestion and poorly laid out off street parking). The problem is further complicate by franchise operations which have their own individual design standards and site development plans which are duplicated in every location across the county without regard for the individual setting. One example of development which has quality building on an individual basis, however, is an architectural mismatch in total, is the Cobblestone Alley development on the southeast corner of Central and Rock Road. Originally conceived (and sold to the public, MAPC, and Board of City Commissioners as an integrated development of quaint shops with an architectural blend, financing problems led to an individual parcel sell off with such divergency in architecture from the colonial style Ethan Allen furniture store to the modern theaters located on the site. Even the architecturally integrated and pleasing Towne East Square development has the individual franchise restaurant operation, Sambo's, which appears totally out of place with the surrounding development.

These situations arise, as I see it, from a lack of adequate feasibility studies by the applicant; the lack of expertise by the developer in going from conversion of raw land to developed parcel; and/or deficiencies in our Community Unit Plan regulations. This fact has been recognized by the staff for some time and accordingly, considerable effort has been expended in development of a three phase P.U.D. (Planned Unit Development) ordinance which is modeled after the recommendations of the American Society of Planning Officials and has been successfully employed in other major cities across the nation over the past ten to twenty years. This P.U.D. provision has been incorporated into the proposed zoning ordinance as an optional device and will be considered along with the proposed ordinance in public hearings slated for spring of 1978.

The Planned Unit Development (P.U.D.) District is not located on the zoning map per se, but specific parcels would be designated only after application by the developer and approval by a designated public body as a zone change to the P.U.D. district. The essence of the P.U.D. combines the traditional idea of zoning, e.g., regulation of use, height, bulk and improvements with subdivision techniques of lotting arrangements and guarantee of public improvements. Fundamental to the P.U.D. process is the site plan review with three principal actors -- the developer, the public review authority represented by staff, planning commission and governing body, and those people who reside in the area of the proposed development.

The American Society of Planning Officials has recommended a three stage review process:

- 1) a preapplication conference - usually with staff to discuss concepts, policies and standards

- 2) a preliminary plan submitted for public hearing and containing the general uses, specific use limitations, setbacks, internal circulation patterns (vehicular and pedestrian) and general arrangement of buildings, open space, landscape areas, buffer areas (and techniques), controlling standards such as residential density, number of units or commercial controls (floor area, etc.) and parking standards

- 3) a final development plan which contains the design specifics of the preliminary development plan in their final form. A detailed site plan shall be included in the final development plan. However color, materials, texture and architectural style as indicated by building elevations are not normally part of the ordinance requirements.

Inherent in the three stage process is the timing element. The preliminary plan shall be approved for a specific period of time, with final plan submission required in a given time frame, and failure to build with a certain period after final plan approval shall constitute termination of the approval

unless an extension is granted by the governing body. Thus, the overall development is tied to an integrated specific proposal with development occurring in a specified way within a specified time.

Alternate Approaches to Design Control

We have reviewed the commonly used design control techniques and have described those activities in Appendix A. Few, if any of these techniques appear to be adaptable to Wichita.

Aesthetic Control in Wichita

Although Wichita may not have had the specific type of architectural controls discussed in the appendix, several types of such control have been in existence.

- A) Urban Renewal Projects - the Urban Renewal Board considers specific redevelopment projects with the building and architectural plans approved in conjunction with the project. Plan modification requires Board approval and City Commission approval.

- B) Aesthetic Type Ordinances - sign controls and screening and landscaping provisions are found within the current zoning ordinance.

- C) Historic Landmark Preservation Districts - the Historic Landmark Preservation Committee reviews architectural plans for exterior improvements of designated landmarks or structures located within a designated historical district.
- D) Private Covenants - although not enforceable by governmental bodies, many existing subdivisions have private covenants which require architectural review of building plans by a designated body (Rockwood, Benjamin Hills et al) with standards for style, height, etc.
- E) Previous attempts to require architectural integrity on C.U.P.'s. Two C.U.P.'s which have been approved in Wichita contain some form of architectural reference:

- 1) Comotara C.U.P., (revised DP-46) contains a statement on the Commercial Parcel as follows: "Architectural Control of all Buildings will be consistent through total commercial office areas". The language was included by the developer and not as a requirement by the City. The statement is fairly open ended and contains no specific standards of what constitutes "consistent" or "architectural control". It will be pretty much to the discretion of the plans examiner in the Office of Central Inspection to determine what these terms mean.

2) University Gardens, (revised CP-8) C.U.P. required:

"the buildings on parcels 8, 10, and 11 shall be designed and constructed as an integrated shopping center structure. Each building shall be attached to the other by means of a common wall or walls resulting in a single continuous structure..."

"Integrated" as used in the discussion of C.U.P. approval appeared to relate to a structure having common walls and central location as opposed to Cobblestone which developed as a series of separate (as opposed to integrated) buildings. Language or direction of design exterior as to color, texture, type of material or architectural style was not interpreted to be part of the word "integrated". As interpreted by the Office of Central Inspection the similar architectural detail on the decorative awnings also contributes to an integrated shopping center although the K-Mart and Dillons buildings are somewhat dissimilar in appearance. The lack of specific design standards puts the permit issuance authority at a disadvantage in determining exactly what is required. However, it should be recognized that to write design standards is quite difficult even if deemed desirable.

Alternates for Wichita

Appendix A contains a general discussion of aesthetic controls as well as an examination of techniques used in other parts of the country.

If the definition of the problem in Wichita, e.g., the development of large commercial areas unrelated in appearance either to the surrounding area or to each other are the main problems, certain of the non-applicable techniques can be discarded. Anti look-alike ordinances do not address the issue; development incentives for site plan review are not possible under the present zoning ordinance unless the high level of existing rights in the ordinance are reduced to make incentives more attractive; and special regulations and historic districts don't address the problem. Of the remaining control techniques, the site design review board and city design commission would require large increases in city staff, as well as requiring some fundamental changes in existing departments. Should the Commission seek to explore these techniques further, it is suggested that the Department of Law prepare an analysis of the legal issues involved and that the Department of Public Works prepare some preliminary cost estimates for increased staff needs. An advisory committee representing developer interests and local architects should also be consulted on the subject.

Alternate A - Add PUD ordinance procedures.

As an alternative to the above, it is recommended that the three stage approval process for Planned Unit Development as proposed in the new zoning ordinance is the most efficient and economical way to address the problem in Wichita. This involves the substantial upgrading of the existing C.U.P. process. The primary

advantage is one of cost. No increase in staff would be required and, in addition, the neighborhood or surrounding area would have a voice in the plan development during the public hearing process. The P.U.D. Ordinance as contained in the proposed zoning ordinance may need further clarification to embody specific design review areas. Certainly additional changes will be needed if the Commission wishes to add the areas of building architectural review. Should the Commission desire to move in this manner, staff should be instructed to make those changes prior to the public hearings on the proposed zoning ordinance.

If the direction is to the P.U.D. process, a determination must be made as to who is to be the "local administrative authority" to carry out the P.U.D. approval. This can be retained by the governing body, or delegated, such as to the MAPC or specific staff or a combination thereof. Much of the review and approval process seems to be administrative in nature. Retention by the Board of City Commissioners will further increase its work load. However, if the rather subjective area of "good design" is to be satisfactorily resolved, final approval authority should probably be retained by the City Commission. A procedure to allow for administrative adjustments by the staff with monthly reports to the City Commission as to action taken could be initiated. Preliminary P.U.D. approval would be by Board of City Commissioners through MAPC (like existing C.U.P. approval). Final plan approval could be by MAPC with appeal to Board of City Commissioners. Specific proposals as to procedures could be brought to the Board of

City Commissioners when zoning ordinance amendments are submitted. However, the staff would like to have an indication as to the degree involvement to which the Board of City Commissioners would want to participate.

Alternate B - City Commission Policy on C.U.P.'s.

Another course of action is to immediately add additional conditions as a matter of policy on C.U.P.'s now gaining approval under the existing C.U.P. ordinance. Specific changes the Commission may wish to consider, include the following:

- 1) Require feasibility studies as a condition of approval.
- 2) Establish time limits for action.
- 3) Require detail planting/landscape plans to be submitted to Board of City Commissioners and MAPC at time of hearing and approval. Same for detail on Walls. Alternates to this would be to retain approval by the Director of Planning or (other agencies, such as Director of Parks, Director of Public Works, Superintendent of Central Inspection) combination thereof; or provide more specific direction as to the nature of the landscaping to be specified on the C.U.P., e.g., thick, deciduous to hide/screen a given view; hide cars on lots; provide attractive vertical wall with solid hedge material etc., plant groups or elements spaced every "X" feet; ground cover other than grass, used for screening, etc.

- 4) When landscape/screening using plant material is to be used, require underground watering systems or adequate number of and strategically located water outlets. This would also apply to (8) below if adopted.
- 5) Require an internal circulation plan approved by Traffic Engineering, at the time of MAPC and BCC hearing and approval. (Alternate approved by Board of City Commissioners? Traffic Commission?, prior to building permit issuance.)
- 6) Require Traffic Studies when deemed appropriate.
- 7) Instruct Central Inspection Division to require fiscal guarantees for screening, walls, landscape and major entrances, irrigation systems (on-site improvements) when a building permit for main buildings (including free standing buildings) is issued and when the same is not included in the same construction contract.
- 8) Require parking lots or areas of parking lots having over 40 spaces to have landscaping provided to break up large expanses of asphalt.

Additional items the Commission may wish to consider, but which are not recommended due to problems discussed elsewhere in this paper are:

1) As a condition of C.U.P. approval, require that before building permits are issued, that the following be submitted to the Board of City Commissioners for review and approval.

a) Site plan including location of all buildings and detailed internal traffic circulation plan.

b) All buildings including type, elevation(s), color and texture of material.

c) Detail of all sign on building faces.

Approval to be determined as to quality of design, compatibility as to blending with and being part of the adjoining and nearby development (both existing and planned) and environment, conformance to statements of intent by the developer, MAPC and BCC at the time of C.U.P. approval.

Alternate C - Enforcement.

A third set of options is related to enforcement. The following are a series of policy and or administrative acts to provide better enforcement. These have been jointly reviewed by MAPC and Public Works.

1) A check list be developed by the Central Inspection Department (plans examiner staff) for use by the field inspector.

This would be in addition to or an expansion of items normally checked regarding construction inspection.

Things that should be included are:

- a) fences or wall
 - b) landscape material (refer to separate plan - give reference phone to call for assistance, MAPD or Firsching); sprinkler or faucet installation for maintenance of plant materials
 - c) curb cuts
 - d) major entrance design and construction (reference to Traffic Engineering for assistance)
 - e) special drainage provisions (pond, lining, grade, etc.)
 - f) other special items which might be individual to the specific C.U.P.
- 2) The plans examination staff should keep a running total on each C.U.P. of the gross floor area, both on the total site and individual parcel basis. Any plans submitted on an existing C.U.P. site should specifically note all existing structures, their gross floor area, and G.F.A. (gross floor area) of the proposed structure.
- 3) No permits should be issued on any C.U.P. unless the entire site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.

- 4) No administrative adjustments on C.U.P.'s should be granted unless the total site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.
- 5) No occupancy permit shall be issued unless the required screening or landscaping, entrances (drives) and or other C.U.P. requirements have been installed or completed or unless they have been guaranteed to be put in by a specific date.
- 6) No improvements should be deferred until a later date unless sufficient guarantees (cash, letter of credit, etc.) have been made for the improvements.

Summary

It is recommended that:

- 1) The specific sub-elements in Alternate B be identified and stated as Board of City Commissioners policy for immediate implementation.
- 2) That the Commission approve in concept the three tier procedure for PUD, Alternate A, and indicate their initial (not binding) preference as to the degree of Board of City Commission involvement in approvals.

- 3) The Board of City Commissioners concur in Alternate C as to enforcement procedure.

- 4) Provide such other direction as deemed in the public interest.

Robert A. Lakin
Director of Planning

Appendix A

Background Information on Aesthetic Controls

Early efforts or design control is not a recent concept. It was used in the 19th Century to preserve the environment near public monuments of buildings of historic significance. Since then, municipalities have exercised such control to exclude construction that is out of character with other development in the area, to enhance an historical characteristic or theme within an area, and to prohibit or de-emphasize billboards, tall buildings, and other visual interference of scenic vistas and areas of natural beauty.

The first application of public architectural review to influence the appearance of new or reconstructed private buildings in the United States is generally credited to Santa Barbara, California. A 1925 ordinance established an architectural review board following an earthquake which destroyed a substantial number of structures on the principal business street. The board passed upon some 2,000 building permits over an eight month period and succeeded in having new construction proceed in the "Old California" style. The ordinance was then repealed.

Over the next few decades architectural controls were confined primarily to regulating "nuisance" type situations such as junkyards and billboards or in preserving areas of a unique

historic and architectural heritage as in the preservation of the French Quarter in New Orleans, Louisiana; the core area of Santa Fe, New Mexico, and the waterfront areas of Nantucket, Massachusetts.

Since the late 1950's however, other architectural or exterior design review boards have been established throughout the nation, with each board having varying degrees of power and responsibility.

Legal Considerations

As might be expected, design review boards and their relationship to aesthetics have been the subject of considerable legal discussion.

The regulation of appearance in historic preservation areas has by now received rather firm judicial acceptance. Beginning with the New Orleans cases stemming from the Vieux Carre provisions of the Louisiana Constitution and extending through advisory opinions in Massachusetts relating to preservation of Nantucket and Boston's Beacon Hill, the string of cases includes a 1964 decision by the New Mexico Supreme Court upholding rather detailed architectural regulations for the Historical District of Santa Fe (including a restriction against window panes more than 30 inches square).

The Oregon Supreme Court has sustained total exclusion of junkyards from a city solely on aesthetic grounds, the Pennsylvania Supreme Court has sustained the licensing of junkyards on the basis of aesthetic affect on the community, and the highest courts of both Washington and Kentucky have sustained requirements that junkyards be fenced or screened from highways. The New York Court of Appeals has upheld a prohibition against clotheslines in front yards and an intermediate court in New Jersey upheld a prohibition against parking of trailers outside a building; both cases in part decided on aesthetic grounds.

Both California and North Carolina have state enabling legislation which authorizes site and design review boards. The judicial history of architectural controls on structures and buildings has been rather spotty with cases in New York in the early twenties ruling that aesthetics alone were not a valid exercise of the police power yet aesthetic ends could be achieved by stretching the purpose of an aesthetic regulation to reach the orthodox components of the police power -- public health, safety, and morals. The California Courts generally invalidate restrictions on the use of private property for aesthetic purposes alone as an unconstitutional taking, yet have ruled that aesthetic purposes may be considered, as a part of the police power where other factors are found to exist. Kansas has also ruled as to the latter in *Ware vs. Wichita*. If aesthetic considerations are woven into validly enacted zoning ordinances which deal with other factors, the California Courts will tend to uphold them.

In summation, although the Courts are reluctant to use aesthetics as a sole determinant of exercise of the police power, the past few years have shown a marked tendency to uphold a regulation of aesthetics when they are reasonable and interwoven within other valid exercises of the police power.

Aesthetic or Architectural Controls Utilized in Cities across the Nation.

Architectural or aesthetic controls across the nation have taken many forms. However, they can be separated on a general basis among the following classifications.

A) Anti look-alike/must look-alike ordinances.

These types of regulations are most often found in affluent suburban communities which seek to regulate residential diversity either pro or con. The must look-alike regulations provide that residential structures must harmonize with other structures in the area if a certain percentage of the area or block is developed with residences of a similar architectural style. Conversely, anti look-alike ordinances prohibit in excess of a certain percentage of any block from having the same architectural style. Often the same municipalities have both types, e.g., ordinances employing the anti look-alike provisions in developing areas and the must look-alike provisions in established neighborhoods. Routinely, such ordinances are administered by building permit

officers on the basis of building plans submitted at the permit stage. Scarsdale, New York, Princeton Township, New Jersey, Arlington Heights and Lake Forest, Illinois, Barrington, Rhode Island, and South Euclid, Ohio, all have one or both of these types of ordinances. These types of regulations would appear to have little applicability to Wichita in that they are rarely found in larger cities, would require a large increase in building permit personnel, and do not address the primary problem in Wichita of architecturally regulating commercial uses.

B) Historic District Preservation

Regulates exterior architectural modification in designated historical sections of the city. The prime examples are found in the aforementioned areas of New Orleans, Santa Fe, Nantucket and Beacon Hill, as well as other cities of historical significance such as Savannah, Georgia. Wichita has the only historic landmark preservation ordinance in Kansas and embodies two historic districts as well as numerous individual historic structures. These types of ordinances are most often administered through design review boards although a few areas utilize the building permit officer with appeal to the governing body.

C) Regulations Affecting Specific Uses Such as Billboards, Junkyards, etc.

Most common type of aesthetic control although often established for purposes of health, safety and public welfare. Most cities in the United States have some form of this type of regulation and it is most often enforced at the permit level. The Wichita Zoning Ordinance has provisions regulating both signs and requiring screening of junkyards and salvage operations. The screening and landscaping provisions of the Zoning Ordinance also would be an example of aesthetic control.

D) Incentive Bonuses for Site Review

These types of ordinances are found in traditional zoning regulations whereby the bulk, height and density requirements are strictly defined with certain districts permitting a development bonus contingent upon the submission and approval of a development plan which also controls architectural style. The Rosslyn area of Arlington County, Virginia, is the most often cited example of this type of aesthetic control. The developer is granted bonuses both in terms of density and bulk in exchange for submission of definite site plans, including architectural review. The major prerequisite for this type of zoning incentive is that the existing zoning districts must be as strict as possible without constituting a taking of property. This makes the application of such techniques for architectural review almost unusable in Wichita, because the existing zoning districts are so lenient in terms of bulk, density and use (especially in the "B" Multiple Family and

Commercial Districts) that no one would ever need a bonus. Even the new zoning ordinance does not propose this degree of strictness.

Another problem is that such ordinances tread close to "contract zoning" which is generally assumed to be illegal in Kansas (except as expressly permitted by the PUD legislation). The ordinance can be structured so that site plan approval is technically a condition to be met in obtaining a building permit rather than a prerequisite for zoning.

E) Design and Site Review Required of All Building Permits

This is the most ambitious of all the architectural review controls and is generally found in smaller communities in California, Oregon and Colorado. The most widely cited of such regulations is found in Beaverton, Oregon, which established a five member Board of Design Review in 1971. No building permit may be issued without the review and approval of the Board as to site, sign, landscaping, and design plans. Only single family and duplex structures are exempt from such review. The Review Board is appointed by the mayor and representation of design and site development disciplines, as well as financial and business interests is required by ordinance. The standards for design review are contained in the ordinance and plans are reviewed by the Planning Staff for compliance prior to Board review.

The major problem with the application of design and site review of all plans in Wichita is that most of the communities which have such requirements are rather small and don't have a large volume of permit applications. (Beaverton only had 75 reviews in the first eighteen months.)

In Wichita, city staff would have to be increased tremendously to provide for adequate design review and the Board itself would be considering probably 30 to 50 applications at each meeting. Also, because of the interrelationship of lenders, architects, planners, and builders, those communities which have total design review have shown a tendency to apply the standard most stringently on "outside developers" while approving local builders plans in a more lenient way.

F) Overall City Design Commission

These types of ordinances differ from the preceeding types in that Overall City Design Commissions do not concentrate on each individual building permit per se, but work to provide overall goals and objectives for the City regarding design, often with different areas of the City divided into different design districts.

Following an intensive "Goals for Dallas" program of a decade ago (which included specific objectives in terms of urban design), the City of Dallas created an urban design division

within a combined planning and development agency. A core staff of 20 specialists aid all other agencies, developers, and community groups in a continually expanding range of activities. The staff provides guidance for several major development, conservation, and ethnic community districts. Much work is done on city owned or controlled items, e.g., traffic signals, street light standards, other street furniture, street patterns and circulation, park locations and designs and historical theme conservation areas. Around the city are projects, districts, and corridors subject to new design concepts and guideline controls. Design review is performed on zoning changes in areas identified as special districts.

The City of Baltimore, Maryland has created a sophisticated design review and management system which is helping to improve design in the city. All publicly funded projects are reviewed by a design advisory panel which consists of architects and landscape architects. An ordinance provides that one percent of the cost of public projects be spent on works of art.

The City of Seattle established a municipal design commission in 1968 to act in an advisory capacity to the city council in connection with design aspects of all capital improvement projects.

The City of Portland, Oregon, has established an overlay zoning district, the "D" Design Zone, for the purpose of conserving and

enhancing the appearance of the city. Most often the "D" zone is applied to areas of scenic value, historical note, and architectural merit. A design committee of the City Planning Commission reviews all building permits in the "D" zone and has the authority to require changes in appearance of the building or land.

Kansas City, Missouri has general planned development districts. A general land use plan is approved for each district which includes specific land use control zones with urban design standards.

The overall city design commissions' functions range from merely approving the design of municipal funded projects to approving building plans of private developers in certain districts. These special districts tend to be areas of unique natural beauty, historical significance, or ethnic/cultural heritage centers. Although Wichita could attempt such aesthetic regulation (e.g., setting up a special "river corridor" to review plans in a special district adjacent to the Arkansas River), the overall city design commission is not a technique which would address the major problem in Wichita of large commercial activities designed on a piecemeal basis. It is certain that creation of an overall city design commission would increase staff expenditures substantially and such commissions need a consensus in establishing overall urban design goals and objectives.

January 26, 1978

Robert A. Lakin, Director of Planning

C.U.P. - Aesthetic Control, Design Consideration
and Approval Process

Attached is a draft paper to the Board of City Commissioners on C.U.P. problems. I would appreciate your review and comment by February 3, 1978. Read for accuracy of facts, your view of theory and for problems in administration. Legal folks read to keep Board of City Commissioners and Lakin out of trouble.

Robert A. Lakin
Director of Planning

RAL:rme
Attachment

Cover memo and copy of draft to: Robert Finch, Deputy City Manager
Ray Bruggeman, Director, DPW
John Dekker, Director of Law
H. R. Kuhn, City Attorney
Jack H. Galbraith, Chief Planner
Robert Feldner, Superintendent, CI
Mike Meek, Senior Planner

D R A F T

Board of City Commissioners

Robert A. Lakin, Director of Planning

C.U.P.'s - Aesthetic Control, Design Consideration and Approval Process.

The Problem - As stated by the Commission, many of the city's larger developments look terrible. This is expressed as dissatisfaction with a number of items. Included in these concerns is architectural style, divergence or use of several architectural themes on the same "project"; the creation of multiple structures when a "center" was promised; automobile parking unbroken by interior site landscaping; lack of continuity in sign graphics both on faces of buildings or for street area signs; the extent or lack of landscaping/screening approved and installed; the care and maintenance of landscaping, walls and fencing; and the failure to build what was promised. There may be more items. Some are more significant than others. Commissioners, staff and public also have different perceptions as to what is good design and what is not.

Another problem has been enforcement of C.U.P. conditions through the construction stage and particularly after occupancy of the project. As the latter condition, maintenance of plantings and walls as well as unauthorized modifications have been a problem.

On July 26 1977, the City Commission directed the administrative staff to develop proposals for the control of aesthetics of construction and the methods of enforcement to assure that developments are built in such a way as to be compatible with the surrounding neighborhood.

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and obtained a complete change in procedure for C.U.P. approvals which resulted in the regulations we use today.

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Pursuant to the directive of the City Commission, members of my staff have researched existing ordinances in other cities to determine the most efficient and economical methods to assure development which is both architecturally compatible with the neighborhood, yet will not unduly generate more "red tape".

A major problem in Wichita has been with large scale commercial developments which are originally proposed as an integrated unit, which are later developed on a parcel by parcel basis by different owners and builders. When looked at on an individual basis, the uses/buildings may well be aesthetically pleasing, yet when viewed in total, form a visual hodgepodge of unrelated architectural styles. Conflicts in site design also occur, primarily in access (additional curb cuts wanted, internal traffic circulation and congestion and poorly laid out off street parking). The problem is further complicate by franchise operations which have their own individual design standards and site development plans which are duplicated in every location across the county without regard for the individual setting. One example of development which has quality building on an individual basis, however, is an architectural mismatch in total, is the Cobblestone Alley development on the southeast corner of Central and Rock Road. Originally conceived (and sold to the public, MAPC, and Board of City Commissioners as an integrated development of quaint shops with an architectural blend, financing problems led to an individual parcel sell off with such divergency in architecture from the colonial style Ethan Allen furniture store to the modern theaters located on the site. Even the architecturally integrated and pleasing Towne East Square development has the individual franchise restaurant operation, Sambo's, which appears totally out of place with the surrounding development.

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- 2) a preliminary plan submitted for public hearing and containing the general uses, specific use limitations, setbacks, internal circulation patterns (vehicular and pedestrian) and general arrangement of buildings, open space, landscape areas, buffer areas (and techniques), controlling standards such as residential density, number of units or commercial controls (floor area, etc.) and parking standards

- 3) a final development plan which contains the design specifics of the preliminary development plan in their final form. A detailed site plan shall be included in the final development plan. However color, materials, texture and architectural style as indicated by building elevations are not normally part of the ordinance requirements.

Inherent in the three stage process is the timing element. The preliminary plan shall be approved for a specific period of time, with final plan submission required in a given time frame, and failure to build with a certain period after final plan approval shall constitute termination of the approval

unless an extension is granted by the governing body. Thus, the overall development is tied to an integrated specific proposal with development occurring in a specified way within a specified time.

Alternate Approaches to Design Control

We have reviewed the commonly used design control techniques and have described those activities in Appendix A. Few, if any of these techniques appear to be adaptable to Wichita.

Aesthetic Control in Wichita

Although Wichita may not have had the specific type of architectural controls discussed in the appendix, several types of such control have been in existence.

- A) Urban Renewal Projects - the Urban Renewal Board considers specific redevelopment projects with the building and architectural plans approved in conjunction with the project. Plan modification requires Board approval and City Commission approval.

- B) Aesthetic Type Ordinances - sign controls and screening and landscaping provisions are found within the current zoning ordinance.

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"the buildings on parcels 8, 10, and 11 shall be designed and constructed as an integrated shopping center structure. Each building shall be attached to the other by means of a common wall or walls resulting in a single continuous structure..."

"Integrated" as used in the discussion of C.U.P. approval appeared to relate to a structure having common walls and central location as opposed to Cobblestone which developed as a series of separate (as opposed to integrated) buildings. Language or direction of design exterior as to color, texture, type of material or architectural style was not interpreted to be part of the word "integrated". As interpreted by the Office of Central Inspection the similar architectural detail on the decorative awnings also contributes to an integrated shopping center although the K-Mart and Dillons buildings are somewhat dissimilar in appearance. The lack of specific design standards puts the permit issuance authority at a disadvantage in determining exactly what is required. However, it should be recognized that to write design standards is quite difficult even if deemed desirable.

Alternates for Wichita

Appendix A contains a general discussion of aesthetic controls as well as an examination of techniques used in other parts of the country.

If the definition of the problem in Wichita, e.g., the development of large commercial areas unrelated in appearance either to the surrounding area or to each other are the main problems, certain of the non-applicable techniques can be discarded. Anti look-alike ordinances do not address the issue; development incentives for site plan review are not possible under the present zoning ordinance unless the high level of existing rights in the ordinance are reduced to make incentives more attractive; and special regulations and historic districts don't address the problem. Of the remaining control techniques, the site design review board and city design commission would require large increases in city staff, as well as requiring some fundamental changes in existing departments. Should the Commission seek to explore these techniques further, it is suggested that the Department of Law prepare an analysis of the legal issues involved and that the Department of Public Works prepare some preliminary cost estimates for increased staff needs. An advisory committee representing developer interests and local architects should also be consulted on the subject.

Alternate A - Add PUD ordinance procedures.

As an alternative to the above, it is recommended that the three stage approval process for Planned Unit Development as proposed in the new zoning ordinance is the most efficient and economical way to address the problem in Wichita. This involves the substantial upgrading of the existing C.U.P. process. The primary

advantage is one of cost. No increase in staff would be required and, in addition, the neighborhood or surrounding area would have a voice in the plan development during the public hearing process. The P.U.D. Ordinance as contained in the proposed zoning ordinance may need further clarification to embody specific design review areas. Certainly additional changes will be needed if the Commission wishes to add the areas of building architectural review. Should the Commission desire to move in this manner, staff should be instructed to make those changes prior to the public hearings on the proposed zoning ordinance.

If the direction is to the P.U.D. process, a determination must be made as to who is to be the "local administrative authority" to carry out the P.U.D. approval. This can be retained by the governing body, or delegated, such as to the MAPC or specific staff or a combination thereof. Much of the review and approval process seems to be administrative in nature. Retention by the Board of City Commissioners will further increase its work load. However, if the rather subjective area of "good design" is to be satisfactorily resolved, final approval authority should probably be retained by the City Commission. A procedure to allow for administrative adjustments by the staff with monthly reports to the City Commission as to action taken could be initiated. Preliminary P.U.D. approval would be by Board of City Commissioners through MAPC (like existing C.U.P. approval). Final plan approval could be by MAPC with appeal to Board of City Commissioners. Specific proposals as to procedures could be brought to the Board of

City Commissioners when zoning ordinance amendments are submitted. However, the staff would like to have an indication as to the degree involvement to which the Board of City Commissioners would want to participate.

Alternate B - City Commission Policy on C.U.P.'s.

Another course of action is to immediately add additional conditions as a matter of policy on C.U.P.'s now gaining approval under the existing C.U.P. ordinance. Specific changes the Commission may wish to consider, include the following:

- 1) Require feasibility studies as a condition of approval.
- 2) Establish time limits for action.
- 3) Require detail planting/landscape plans to be submitted to Board of City Commissioners and MAPC at time of hearing and approval. Same for detail on Walls. Alternates to this would be to retain approval by the Director of Planning or (other agencies, such as Director of Parks, Director of Public Works, Superintendent of Central Inspection) combination thereof; or provide more specific direction as to the nature of the landscaping to be specified on the C.U.P., e.g., thick, deciduous to hide/screen a given view; hide cars on lots; provide attractive vertical wall with solid hedge material etc., plant groups or elements spaced every "X" feet; ground cover other than grass, used for screening, etc.

- 4) When landscape/screening using plant material is to be used, require underground watering systems or adequate number of and strategically located water outlets. This would also apply to (8) below if adopted.

- 5) Require an internal circulation plan approved by Traffic Engineering, at the time of MAPC and BCC hearing and approval. (Alternate approved by Board of City Commissioners? Traffic Commission?, prior to building permit issuance.)

- 6) Require Traffic Studies when deemed appropriate.

- 7) Instruct Central Inspection Division to require fiscal guarantees for screening, walls, landscape and major entrances, irrigation systems (on-site improvements) when a building permit for main buildings (including free standing buildings) is issued and when the same is not included in the same construction contract.

- 8) Require parking lots or areas of parking lots having over 40 spaces to have landscaping provided to break up large expanses of asphalt.

Additional items the Commission may wish to consider, but which are not recommended due to problems discussed elsewhere in this paper are:

1) As a condition of C.U.P. approval, require that before building permits are issued, that the following be submitted to the Board of City Commissioners for review and approval.

a) Site plan including location of all buildings and detailed internal traffic circulation plan.

b) All buildings including type, elevation(s), color and texture of material.

c) Detail of all sign on building faces.

Approval to be determined as to quality of design, compatibility as to blending with and being part of the adjoining and nearby development (both existing and planned) and environment, conformance to statements of intent by the developer, MAPC and BCC at the time of C.U.P. approval.

Alternate C - Enforcement.

A third set of options is related to enforcement. The following are a series of policy and or administrative acts to provide better enforcement. These have been jointly reviewed by MAPC and Public Works.

1) A check list be developed by the Central Inspection Department (plans examiner staff) for use by the field inspector.

This would be in addition to or an expansion of items normally checked regarding construction inspection.

Things that should be included are:

- a) fences or wall
 - b) landscape material (refer to separate plan - give reference phone to call for assistance, MAPD or Firsching); sprinkler or faucet installation for maintenance of plant materials
 - c) curb cuts
 - d) major entrance design and construction (reference to Traffic Engineering for assistance)
 - e) special drainage provisions (pond, lining, grade, etc.)
 - f) other special items which might be individual to the specific C.U.P.
- 2) The plans examination staff should keep a running total on each C.U.P. of the gross floor area, both on the total site and individual parcel basis. Any plans submitted on an existing C.U.P. site should specifically note all existing structures, their gross floor area, and G.F.A. (gross floor area) of the proposed structure.
- 3) No permits should be issued on any C.U.P. unless the entire site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.

- 4) No administrative adjustments on C.U.P.'s should be granted unless the total site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.
- 5) No occupancy permit shall be issued unless the required screening or landscaping, entrances (drives) and or other C.U.P. requirements have been installed or completed or unless they have been guaranteed to be put in by a specific date.
- 6) No improvements should be deferred until a later date unless sufficient guarantees (cash, letter of credit, etc.) have been made for the improvements.

Summary

It is recommended that:

- 1) The specific sub-elements in Alternate B be identified and stated as Board of City Commissioners policy for immediate implementation.
- 2) That the Commission approve in concept the three tier procedure for PUD, Alternate A, and indicate their initial (not binding) preference as to the degree of Board of City Commission involvement in approvals.

- 3) The Board of City Commissioners concur in Alternate C as to enforcement procedure.

- 4) Provide such other direction as deemed in the public interest.

Robert A. Lakin
Director of Planning

Appendix A

Background Information on Aesthetic Controls

Early efforts or design control is not a recent concept. It was used in the 19th Century to preserve the environment near public monuments of buildings of historic significance. Since then, municipalities have exercised such control to exclude construction that is out of character with other development in the area, to enhance an historical characteristic or theme within an area, and to prohibit or de-emphasize billboards, tall buildings, and other visual interference of scenic vistas and areas of natural beauty.

The first application of public architectural review to influence the appearance of new or reconstructed private buildings in the United States is generally credited to Santa Barbara, California. A 1925 ordinance established an architectural review board following an earthquake which destroyed a substantial number of structures on the principal business street. The board passed upon some 2,000 building permits over an eight month period and succeeded in having new construction proceed in the "Old California" style. The ordinance was then repealed.

Over the next few decades architectural controls were confined primarily to regulating "nuisance" type situations such as junkyards and billboards or in preserving areas of a unique

historic and architectural heritage as in the preservation of the French Quarter in New Orleans, Louisiana; the core area of Santa Fe, New Mexico, and the waterfront areas of Nantucket, Massachusetts.

Since the late 1950's however, other architectural or exterior design review boards have been established throughout the nation, with each board having varying degrees of power and responsibility.

Legal Considerations

As might be expected, design review boards and their relationship to aesthetics have been the subject of considerable legal discussion.

The regulation of appearance in historic preservation areas has by now received rather firm judicial acceptance. Beginning with the New Orleans cases stemming from the Vieux Carre provisions of the Louisiana Constitution and extending through advisory opinions in Massachusetts relating to preservation of Nantucket and Boston's Beacon Hill, the string of cases includes a 1964 decision by the New Mexico Supreme Court upholding rather detailed architectural regulations for the Historical District of Santa Fe (including a restriction against window panes more than 30 inches square).

The Oregon Supreme Court has sustained total exclusion of junkyards from a city solely on aesthetic grounds, the Pennsylvania Supreme Court has sustained the licensing of junkyards on the basis of aesthetic affect on the community, and the highest courts of both Washington and Kentucky have sustained requirements that junkyards be fenced or screened from highways. The New York Court of Appeals has upheld a prohibition against clotheslines in front yards and an intermediate court in New Jersey upheld a prohibition against parking of trailers outside a building; both cases in part decided on aesthetic grounds.

Both California and North Carolina have state enabling legislation which authorizes site and design review boards. The judicial history of architectural controls on structures and buildings has been rather spotty with cases in New York in the early twenties ruling that aesthetics alone were not a valid exercise of the police power yet aesthetic ends could be achieved by stretching the purpose of an aesthetic regulation to reach the orthodox components of the police power -- public health, safety, and morals. The California Courts generally invalidate restrictions on the use of private property for aesthetic purposes alone as an unconstitutional taking, yet have ruled that aesthetic purposes may be considered, as a part of the police power where other factors are found to exist. Kansas has also ruled as to the latter in Ware vs. Wichita. If aesthetic considerations are woven into validly enacted zoning ordinances which deal with other factors, the California Courts will tend to uphold them.

In summation, although the Courts are reluctant to use aesthetics as a sole determinant of exercise of the police power, the past few years have shown a marked tendency to uphold a regulation of aesthetics when they are reasonable and interwoven within other valid exercises of the police power.

Aesthetic or Architectural Controls Utilized in Cities across the Nation.

Architectural or aesthetic controls across the nation have taken many forms. However, they can be separated on a general basis among the following classifications.

A) Anti look-alike/must look-alike ordinances.

These types of regulations are most often found in affluent suburban communities which seek to regulate residential diversity either pro or con. The must look-alike regulations provide that residential structures must harmonize with other structures in the area if a certain percentage of the area or block is developed with residences of a similar architectural style. Conversely, anti look-alike ordinances prohibit in excess of a certain percentage of any block from having the same architectural style. Often the same municipalities have both types, e.g., ordinances employing the anti look-alike provisions in developing areas and the must look-alike provisions in established neighborhoods. Routinely, such ordinances are administered by building permit

officers on the basis of building plans submitted at the permit stage. Scarsdale, New York, Princeton Township, New Jersey, Arlington Heights and Lake Forest; Illinois, Barrington, Rhode Island, and South Euclid, Ohio, all have one or both of these types of ordinances. These types of regulations would appear to have little applicability to Wichita in that they are rarely found in larger cities, would require a large increase in building permit personnel, and do not address the primary problem in Wichita of architecturally regulating commercial uses.

B) Historic District Preservation

Regulates exterior architectural modification in designated historical sections of the city. The prime examples are found in the aforementioned areas of New Orleans, Santa Fe, Nantucket and Beacon Hill, as well as other cities of historical significance such as Savannah, Georgia. Wichita has the only historic landmark preservation ordinance in Kansas and embodies two historic districts as well as numerous individual historic structures. These types of ordinances are most often administered through design review boards although a few areas utilize the building permit officer with appeal to the governing body.

C) Regulations Affecting Specific Uses Such as Billboards, Junkyards, etc.

Most common type of aesthetic control although often established for purposes of health, safety and public welfare. Most cities in the United States have some form of this type of regulation and it is most often enforced at the permit level. The Wichita Zoning Ordinance has provisions regulating both signs and requiring screening of junkyards and salvage operations. The screening and landscaping provisions of the Zoning Ordinance also would be an example of aesthetic control.

D) Incentive Bonuses for Site Review

These types of ordinances are found in traditional zoning regulations whereby the bulk, height and density requirements are strictly defined with certain districts permitting a development bonus contingent upon the submission and approval of a development plan which also controls architectural style. The Rosslyn area of Arlington County, Virginia, is the most often cited example of this type of aesthetic control. The developer is granted bonuses both in terms of density and bulk in exchange for submission of definite site plans, including architectural review. The major prerequisite for this type of zoning incentive is that the existing zoning districts must be as strict as possible without constituting a taking of property. This makes the application of such techniques for architectural review almost unusable in Wichita, because the existing zoning districts are so lenient in terms of bulk, density and use (especially in the "B" Multiple Family and

Commercial Districts) that no one would ever need a bonus. Even the new zoning ordinance does not propose this degree of strictness.

Another problem is that such ordinances tread close to "contract zoning" which is generally assumed to be illegal in Kansas (except as expressly permitted by the PUD legislation). The ordinance can be structured so that site plan approval is technically a condition to be met in obtaining a building permit rather than a prerequisite for zoning.

E) Design and Site Review Required of All Building Permits

This is the most ambitious of all the architectural review controls and is generally found in smaller communities in California, Oregon and Colorado. The most widely cited of such regulations is found in Beaverton, Oregon, which established a five member Board of Design Review in 1971. No building permit may be issued without the review and approval of the Board as to site, sign, landscaping, and design plans. Only single family and duplex structures are exempt from such review. The Review Board is appointed by the mayor and representation of design and site development disciplines, as well as financial and business interests is required by ordinance. The standards for design review are contained in the ordinance and plans are reviewed by the Planning Staff for compliance prior to Board review.

The major problem with the application of design and site review of all plans in Wichita is that most of the communities which have such requirements are rather small and don't have a large volume of permit applications. (Beaverton only had 75 reviews in the first eighteen months.)

In Wichita, city staff would have to be increased tremendously to provide for adequate design review and the Board itself would be considering probably 30 to 50 applications at each meeting. Also, because of the interrelationship of lenders, architects, planners, and builders, those communities which have total design review have shown a tendency to apply the standard most stringently on "outside developers" while approving local builders plans in a more lenient way.

F) Overall City Design Commission

These types of ordinances differ from the preceding types in that Overall City Design Commissions do not concentrate on each individual building permit per se, but work to provide overall goals and objectives for the City regarding design, often with different areas of the City divided into different design districts.

Following an intensive "Goals for Dallas" program of a decade ago (which included specific objectives in terms of urban design), the City of Dallas created an urban design division

within a combined planning and development agency. A core staff of 20 specialists aid all other agencies, developers, and community groups in a continually expanding range of activities. The staff provides guidance for several major development, conservation, and ethnic community districts. Much work is done on city owned or controlled items, e.g., traffic signals, street light standards, other street furniture, street patterns and circulation, park locations and designs and historical theme conservation areas. Around the city are projects, districts, and corridors subject to new design concepts and guideline controls. Design review is performed on zoning changes in areas identified as special districts.

The City of Baltimore, Maryland has created a sophisticated design review and management system which is helping to improve design in the city. All publicly funded projects are reviewed by a design advisory panel which consists of architects and landscape architects. An ordinance provides that one percent of the cost of public projects be spent on works of art.

The City of Seattle established a municipal design commission in 1968 to act in an advisory capacity to the city council in connection with design aspects of all capital improvement projects.

The City of Portland, Oregon, has established an overlay zoning district, the "D" Design Zone, for the purpose of conserving and

enhancing the appearance of the city. Most often the "D" zone is applied to areas of scenic value, historical note, and architectural merit. A design committee of the City Planning Commission reviews all building permits in the "D" zone and has the authority to require changes in appearance of the building or land.

Kansas City, Missouri has general planned development districts. A general land use plan is approved for each district which includes specific land use control zones with urban design standards.

The overall city design commissions' functions range from merely approving the design of municipal funded projects to approving building plans of private developers in certain districts. These special districts tend to be areas of unique natural beauty, historical significance, or ethnic/cultural heritage centers. Although Wichita could attempt such aesthetic regulation (e.g., setting up a special "river corridor" to review plans in a special district adjacent to the Arkansas River), the overall city design commission is not a technique which would address the major problem in Wichita of large commercial activities designed on a piecemeal basis. It is certain that creation of an overall city design commission would increase staff expenditures substantially and such commissions need a consensus in establishing overall urban design goals and objectives.

D R A F T

Board of City Commissioners

Robert A. Lakin, Director of Planning

C.U.P.'s - Aesthetic Control, Design Consideration and Approval Process.

The Problem - As stated by the Commission, many of the city's larger developments look terrible. This is expressed as dissatisfaction with a number of items. Included in these concerns is architectural style, divergence or use of several architectural themes on the same "project"; the creation of multiple structures when a "center" was promised; ~~a row of~~ ^{automobile} parking unbroken by interior site landscaping; lack of continuity in sign graphics both on faces of buildings or for street area signs; ~~the~~ ^{the} extent of landscaping/screening approved and installed; the care and maintenance of landscaping, walls and fencing; and the failure to build what was promised. There may be more items. Some are more significant than others. Commissioners, staff and public also have different perceptions as to what is good design and what is not.

Another problem has been enforcement of C.U.P. conditions through the construction stage and particularly after occupancy of the project. As the latter condition, maintenance of plantings and walls as well as unauthorized modifications have been a problem.

On July 26 1977, the City Commission directed the administrative staff to develop proposals for the control of aesthetics of construction and the methods of enforcement to assure that developments are built in such a way as to be compatible with the surrounding neighborhood.

Development of C.U.P. provisions in Wichita

The evaluation of design approval of larger tracts in Wichita has swung from a precise and demanding set of requirements to a very loose set of provisions now contained in the ordinance. In the 1950's, the Planning Commission, staff and City Commission recognized that large scale developments such as shopping centers created special community and area problems which should be dealt with as a condition of development approval. To obtain approval for a shopping center, a precise site plan including specific building size and location was required. Also, an economic justification, *or feasibility study*, a traffic study and plan; and a landscape plan was required. Also a specific time schedule for development was required. When approved by the Board of City Commissioners, all *plans + requirements* were filed with the Register of Deeds.

Detail level approvals given before leases were signed proved to be too confining. Building areas changed with leases, new design concepts developed and economic conditions changed. When the owner of Towne East first obtained their zoning (160+ A) (not the current owner or developer) they requested

and obtained a complete change in procedure for C.U.P. approvals which resulted in the regulations we use today.

These regulations now deal only in generalities, super set-backs, curb cuts, landscape at the edges and a limitation on uses (~~not too limited~~ ^{in effect} many read "uses as permitted in LC") and maximum bulk controls (floor area ground coverage, etc.). The latter usually far exceed the market potential and are in essence no control at all.

A basic problem is that shopping centers and large apartment projects are never really put together until after zoning is obtained. The process is largely one involving speculation. This is not wrong, but answers to problems identified above are not easily solved until the project firms up or unless the developer puts substantial predesign money into the project. Most applicants asking for such zoning have not been willing to do this and to date, neither the Planning Commission nor City Commission have made this a requirement for presenting applications and receiving approval.

Pursuant to ^{the directive of the City Commission,} ~~that request~~, members of my staff have researched existing ordinances in other cities to determine the most efficient and economical methods to assure development which is both architecturally compatible with the neighborhood, yet ^{will} not unduly generate more "red tape".

the developer in going from conversion of raw land to developed parcel; ~~and~~ and/or deficiencies in our Community Unit Plan regulations, ~~which were developed in the pre Towne East days.~~ This fact has been recognized by the staff for some time and accordingly, considerable effort has been expended in development of a three phase ^(Planned Unit Development) P.U.D. ordinance which is modeled after the recommendations of the American Society of Planning Officials and has been successfully employed in other major cities across the nation over the past ten to twenty years. This P.U.D. provision has been incorporated into the proposed zoning ordinance as an optional device and will be considered along with the proposed ordinance in public hearings slated for ~~the spring of 1978.~~ spring of 1978.

The Planned Unit Development (P.U.D.) District is not located on the zoning map per se, but specific parcels would be designated only after application by the developer and approval by a designated public body as a zone change to the P.U.D. district. The essence of the P.U.D. combines the traditional idea of zoning, e.g., regulation of use, height, bulk and improvements with subdivision techniques of lotting arrangements and guarantee of public improvements. Fundamental to the P.U.D. process is the site plan review with three principal actors -- the developer, the public review authority represented by staff, planning commission and governing body, and those people who reside in the area of the proposed development.

The American Society of Planning Officials has recommended a three stage review process:

- 1) a preapplication conference - usually with staff to discuss concepts, policies and standards
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Design Review Board

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Alternative A - ~~FUD~~ Call PUD ordinance procedure.

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* of plans (building, landscape, signs etc)

is significant

City

to allow for

to the City Commission

(like existing CUP approval)

Alternate B - City Commission policy on CUP's

Another ^{option} alternative is to ^{immediately} slightly add additional conditions as a matter of policy on C.U.P.'s now gaining approval under the existing C.U.P. ordinance. Specific changes ^{to be considered} ~~would~~ include the following: ^{the Commission may wish to}

- 1) Require feasibility studies as a condition of approval.

2) Establish time limits for action.

3) Require detail planting/landscape plans to be submitted to Board of City Commissioners and MAPC at time of hearing and approval. Same for detail on Walls Alternates

to this would be to retain approval by the Director of Planning or ^{either agency such as} the Director of Parks, ^{combination thereof; or provide} or ^{both when the nature} of the landscape ^{is to be} is specified on the C.U.P., ^{Dir. of Public Works, Staff of Central Inspection} R.G., thick, deciduous to hide/screen a given view; hide caps on lots; provide attractive vertical wall with solid hedge material etc., ^{plant groups or} elements spaced ^{every} "X" feet ^{along}; ground cover other than grass, used for screening etc.

4) When landscape/screening ^{using} involves plant material is to be used, require ~~water through~~ underground watering systems or adequate number of and strategically located water outlets. This would also apply to (8) below if adopted.

5) Require an internal circulation plan approved by Traffic Engineering, at the time of MAPC and BCC hearing and approval. *(alt approval by BCC? Traffic Commission?, prior to building permit issuance)*

6) Require Traffic Studies when deemed appropriate.

7) Instruct Central Inspection Division to require fiscal guarantees for screening, walls, landscape and major

entrances, irrigation systems (on-site improvements)
when ^a building permit for main buildings ^(including ~~the~~ free standing buildings) is issued and
when the same is not included in the same construction
contract.

- 8) Require parking lots or areas of parking lots having over 40 spaces to have landscaping provided to break up large expanses of asphalt.

Additional items the Commission may wish to consider, but which are not recommended due to problems discussed elsewhere in this paper are:

- 1) As a condition of C.U.P. approval, require that before building permits are issued, that the following be submitted to the Board of City Commissioners for review and approval.
 - a) Site plan including location of all buildings and detailed internal traffic circulation plan.
 - b) All buildings including type, elevation(s), color and texture of material.
 - c) Detail of all sign on building faces.

Approval to be determined as to quality of design, compatibility as to blending with and being part of the

adjoining and nearby development (both existing and planned) and environment, conformance to statements of intent by the developer, MAPC and BCC at the time of C.U.P. approval.

Alternate C - Enforcement.

A third ^{set of options} ~~alternate~~ is related to enforcement. The following are a series of policy and or administrative acts to provide better enforcement. These have been jointly reviewed by MAPC and Public Works. *Spague Basement changed*

1) A checklist be developed (~~we would like to confer with you on the format~~) ^{CID} to be initiated by ~~your~~ office (plans examiner staff) for use by the field inspector. This would be in addition to or an expansion of items normally checked regarding construction inspection. Things that should be included are:

- a) fences or wall
- b) landscape material (refer to separate plan - give reference phone to call for assistance, MAPD or Firsching); sprinkler or faucet installation for maintenance of plant materials
- c) curb cuts
- d) major entrance design and construction (reference to Traffic Engineering for assistance)
- e) special drainage provisions (pond, lining, grade, etc.)
- f) other special items which might be individual to the specific C.U.P.

- 2) The plans examination staff should keep a running total on each C.U.P. of the gross floor area, both on the total site and individual parcel basis. Any plans submitted on an existing C.U.P. site should specifically note all existing structures, their gross floor area, and G.F.A. of the proposed structure. *(gross floor area)*
- 3) No permits should be issued on any C.U.P. unless the entire site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.
- 4) No administrative adjustments on C.U.P.'s should be granted unless the total site (as developed to date) is in compliance or the Board of City Commissioners rules otherwise.
- 5) No occupancy permit shall be issued unless the required screening or landscaping, entrances (drives) and or other C.U.P. rerquirements have been installed or completed or *unless they* have been guaranteed to be put in by a specific date.
- 6) No improvements should be deferred until a later date unless sufficient guarantees (cash, letter of credit, etc.) have been made for the improvements.

Summary

~~P~~
It is recommended that the paper be referred to the MAPC, CPO, Real Estate Advisory Board and the Wichita Architectural organization for review.

~~Just~~
It is recommended that:

- When in alternate B →*
- 1) The specific ~~recommendation~~ ^{sub-elements} in Alternate B be identified and stated as Board of City Commissioners policy for immediate implementation.
 - 2) That the Commission approve in concept the three tier procedure for PUD, Alternate A, and indicate their initial (not binding) preference as to the degree of Board of City Commission involvement in approvals.
 - 3) The Board of City Commissioners concur in Alternate C as to enforcement procedure.
 - 4) Provide such other direction as deemed in the public interest.

Appendix A

Background Information on Aesthetic Controls

Early efforts or design control is not a recent concept. It was used in the 19th Century to preserve the environment near public monuments of buildings of historic significance. Since then, municipalities have exercised such control to exclude construction that is out of character with other development in the area, to enhance an historical characteristic or theme within an area, and to prohibit or de-emphasize billboards, tall buildings, and other visual interference of scenic vistas and areas of natural beauty.

The first application of public architectural review to influence the appearance of new or reconstructed private buildings in the United States is generally credited to Santa Barbara, California. A 1925 ordinance established an architectural review board following an earthquake which destroyed a substantial number of structures on the principal business street. The board passed upon some 2,000 building permits over an eight month period and succeeded in having new construction proceed in the "Old California" style. The ordinance was then repealed.

Over the next few decades architectural controls were confined primarily to regulating "nuisance" type situations such as junkyards and billboards or in preserving areas of a unique

historic and architectural heritage as in the preservation of the French Quarter in New Orleans, Louisiana; the core area of Santa Fe, New Mexico, and the waterfront areas of Nantucket, Massachusetts.

Since the late 1950's however, other architectural or exterior design review boards have been established throughout the nation, with each board having varying degrees of power and responsibility.

Legal Considerations

~~Legal Considerations~~ As might be expected, design review boards and their relationship to aesthetics have been the subject of considerable legal discussion.

The regulation of appearance in historic preservation areas has by now received rather firm judicial acceptance. Beginning with the New Orleans cases stemming from the Vieux Carre provisions of the Louisiana Constitution and extending through advisory opinions in Massachusetts relating to preservation of Nantucket and Boston's Beacon Hill, the string of cases includes a 1964 decision by the New Mexico Supreme Court upholding rather detailed architectural regulations for the Historical District of Santa Fe (including a restriction against window panes more than 30 inches square).

The Oregon Supreme Court has sustained total exclusion of junkyards from a city solely on aesthetic grounds, the Pennsylvania Supreme Court has sustained the licensing of junkyards on the basis of aesthetic affect on the community, and the highest courts of both Washington and Kentucky have sustained requirements that junkyards be fenced or screened from highways. The New York Court of Appeals has upheld a prohibition against clotheslines in front yards and an intermediate court in New Jersey upheld a prohibition against parking of trailers outside a building; ^{cases in part decided} both on aesthetic grounds.

Both California and North Carolina have state enabling legislation which authorizes site and design review boards. The judicial history of architectural controls on structures and buildings has been rather spotty with cases in New York in the early twenties ruling that aesthetics alone were not a valid exercise of the police power yet aesthetic ends could be achieved by stretching the purpose of an aesthetic regulation to reach the orthodox components of the police power -- public health, safety, and morals. The California Courts generally invalidate restrictions on the use of private property for aesthetic purposes alone as an unconstitutional taking, yet have ruled that aesthetic purposes may be considered, as a part of the police power where other factors are found to exist. Kansas has also ruled as to the latter in *Ware vs. Wichita*. If aesthetic considerations are woven into validly enacted zoning ordinances which deal with other factors, the California Courts will tend to uphold them.

In summation, although the Courts are reluctant to use aesthetics as a sole determinant of exercise of the police power, the past few years have shown a marked tendency to uphold a regulation of aesthetics when they are reasonable and interwoven within other valid exercises of the police power.

Aesthetic or Architectural Controls Utilized in Cities across the nation.

Architectural or aesthetic controls across the nation have taken many forms. However, they can be separated on a general basis among the following classifications.

A) Anti look-alike/must look-alike ordinances.

These types of regulations are most often found in affluent suburban communities which seek to regulate residential diversity either pro or con. The must look-alike regulations provide that residential structures must harmonize with other structures in the area if a certain percentage of the area or block is developed with residences of a similar architectural style. Conversely, anti look-alike ordinances prohibit in excess of a certain percentage of any block from having the same architectural style. Often the same municipalities have both types, e.g., ordinances employing the anti look-alike provisions in developing areas and the must look-alike provisions in established neighborhoods. Routinely, such ordinances are administered by building permit

officers on the basis of building plans submitted at the permit stage. Scarsdale, New York, Princeton Township, New Jersey, Arlington Heights and Lake Forest, Illinois, Barrington, Rhode Island, and South Euclid, Ohio all have one or both of these types of ordinances. These types of regulations would appear to have little applicability to Wichita in that they are rarely found in larger cities, would require a large increase in building permit personnel, and do not address the primary problem in Wichita of architecturally regulating commercial uses.

B) Historic District Preservation

Regulates exterior architectural modification in designated historical sections of the city. The prime examples are found in the aforementioned areas of New Orleans, Santa Fe, Nantucket and Beacon Hill, as well as other cities of historical significance such as Savannah, Georgia. Wichita has the only historic landmark preservation ordinance in Kansas and embodies ^{TWO} ~~one~~ historic districts as well as numerous individual historic structures. These types of ordinances are most often administered through design review boards although a few areas utilize the building permit officer ^{with} ~~which~~ appeal to the governing body.

C) Regulations Affecting Specific Uses Such as Billboards, Junkyards, etc..

Most common type of aesthetic control although often established for purposes of health, safety and public welfare. Most cities

in the United States have some form of this type of regulation and it is most often enforced at the permit level. The Wichita Zoning Ordinance has provisions regulating both signs and requiring screening of junkyards and salvage operations. The screening and landscaping provisions of the Zoning Ordinance also would be an example of aesthetic control.

D) Incentive Bonuses for Site Review

These types of ordinances are found in traditional zoning regulations whereby the bulk, height and density requirements are strictly defined with certain districts permitting a development bonus contingent upon the submission and approval of a development plan which also controls architectural style. The Rosslyn area of Arlington County, Virginia, is the most often cited example of this type of aesthetic control. The developer is granted bonuses both in terms of density and bulk in exchange for submission of definite site plans, including architectural review. The major prerequisite for this type of zoning incentive is that the existing zoning districts must be as strict as possible without constituting a taking of property. This makes the application of such techniques for architectural review almost unusable in Wichita, because the existing zoning districts are so lenient in terms of bulk, density and use (especially in the "B" Multiple Family and Commercial Districts) that no one would ever need a bonus. Even the new zoning ordinance does not propose this degree of strictness.

Another problem is that such ordinances tread close to "contract zoning" which is generally assumed to be illegal in Kansas (except as expressly permitted by the PUD legislation). The ordinance can be structured so that site plan approval is technically a condition to be met in obtaining a building permit rather than a prerequisite for zoning.

E) Design and Site Review Required of All Building Permits

This is the most ambitious of all the architectural review controls and is generally found in smaller communities in California, Oregon and Colorado. The most widely cited of such regulations is found in Beaverton, Oregon, which established a five member Board of Design Review in 1971. No building permit may be issued without the review and approval of the Board as to site, sign, landscaping, and design plans. Only single family and duplex structures are exempt from such review. The Review Board is appointed by the mayor and representation of design and site development disciplines, as well as financial and business interests is required by ordinance. The standards for design review are contained in the ordinance and plans are reviewed by the Planning Staff for compliance prior to Board review.

The major problem with the application of design and site review of all plans in Wichita is that most of the communities which have such requirements are rather small and don't have a large volume of permit applications. (Beaverton only had 75 reviews in the first eighteen months.)

In Wichita, city staff would have to be increased tremendously to provide for adequate design review and the Board itself would be considering probably 30 to 50 applications at each meeting. Also, because of the interrelationship of lenders, architects, planners, and builders, those communities which have total design review have shown a tendency to apply the standard most stringently on "outside developers" while approving local builders plans in a more lenient way.

F)

* Specific policies related to design are submitted for inclusion in the comprehensive plan to zoning. This is somewhat similar to the way SIO and CIP review procedure.

Much work is done on city council or controlled items i.e. Traffic signals, street light standards, other street furniture, street pavement materials, park benches, etc.

F) Overall City Design Commission

These types of ordinances differ from the preceding types in that Overall City Design Commissions do not concentrate on each individual building permit per se, but work to provide overall goals and objectives for the City regarding design, often with different areas of the City divided into different design districts.

[Handwritten signature]

Following an intensive "Goals for Dallas" program of a decade ago (which included specific objectives in terms of urban design), the City of Dallas created an urban design division within a combined planning and development agency. A core staff of 20 specialists aid all other agencies, developers, and community groups in a continually expanding range of activities. The staff provides guidance for several major development, conservation, and ethnic community districts. # Around the city are projects, districts, and corridors subject to new design concepts and guideline controls. Design review is performed on zoning changes in areas identified as special districts.

[Handwritten note: How about authority by who? when? where?]

The City of Baltimore, Maryland has created a sophisticated design review and management system which is helping to improve design in the city. All publically funded projects are reviewed by a design advisory panel which consists of architects and landscape architects. An ordinance provides that one percent of the cost of public projects be spent on works of art.

The City of Seattle established a municipal design commission in 1968 to act in an advisory capacity to the city council in connection with design aspects of all capitol improvement projects.

The City of Portland, Oregon, has established an overlay zoning district, the "D" Design Zone, for the purpose of conserving and enhancing the appearance of the city. Most often the "D" zone is applied to areas of scenic value, historical note, and architectural merit. A design committee of the City Planning Commission reviews all building permits in the "D" zone and has the authority to require changes in appearance of the building or land.

[Handwritten note: and national theme conservation areas]

Kansas City, Missouri has general planned development districts. A general land use plan is approved for each district which includes specific land use control zones with urban design standards.

[Handwritten initials]

~~the design commissions~~

The overall city design commissions' functions range from merely approving the design of municipal funded projects to approving building plans of private developers in certain districts. These special districts tend to be areas of unique natural beauty, historical significance, or ethnic/cultural^{quintessence} centers. ~~The major drawback to~~ Although Wichita could attempt such aesthetic regulation (eg. setting up a special "river corridor" to review plans ~~in~~ in a special district adjacent to the Arkansas River), the overall city design commission is not a technique which would address the major problem in Wichita of large commercial activities designed on a piecemeal basis. It is certain that creation of an overall city design commission would increase staff expenditures substantially and such commissions need a consensus in establishing overall urban design goals and objectives.