

DR 67-15 - Possible amendment to the
Sedg. Co. zoning resolution concerning
expan. of the home occup. provisions in
"R" and "R-1" zoning districts.

ACTION

DATE

COMMITTEE

9-22-88

M.A.P.C.

Approved

10/20/88

Adopted

E.C.C.T.B. CO. C.

Section H-A § 5A.

As amended by Resolution #162-1985.

as adopted on December 14, 1984
and amended by Resolution #162-1985

and Resolution #162-185
are hereby repealed.

EFFECTIVE DATE

(Published in The Daily Reporter on November 11, 1988)

RESOLUTION 248-1988

A. RESOLUTION AMENDING THE ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS AS PUBLISHED IN BOOK FORM BY THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION, EDITION OF OCTOBER 5, 1983 AND ADOPTED BY THE BOARD OF SEDGWICK COUNTY COMMISSIONERS ON DECEMBER 12, 1984 AND BECAME EFFECTIVE JANUARY 1, 1985, BY AMENDING SECTIONS 3-B, 3-E AND ADDING A NEW SECTION 3-F TO THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS"; ALL IN ACCORDANCE WITH THE AUTHORITY GRANTED IN SECTION 17.C THEREOF.

B. IT IS RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

SECTION I. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 12, 1984, Section 3-"HOME OCCUPATIONS"; Subsection B-"DEFINITION", shall be amended to read as follows:

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is necessary to a residential building.

SECTION II. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas AS ADOPTED ON DECEMBER 12, 1984, SECTION 3-"HOME OCCUPATIONS"; Subsection E. - "PARTICULAR HOME OCCUPATIONS PROHIBITED", shall be amended to read as follows:

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity.
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and materials storage on-site except as provided in Subsection F. hereof.
11. Any use first permitted in the "F-1" light industrial or "F-2" heavy industrial districts unless specifically listed under Subsection F.7. hereof.

SECTION III. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 12, 1984, a new Section 3-"HOME OCCUPATIONS"; Subsection F. "RURAL HOME OCCUPATIONS PERMITTED", shall be added to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED: In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R-1" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer

than 200 feet from adjacent property lines or public street right-of-way. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.

5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.

6. The provisions of Subsections C.1.a., C.1.c, C.3.b, and C.3.c shall apply.

7. One on-site, free-standing or attached to an accessory building, non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.

8. Uses permitted in addition to those allowed by Subsection D. include:

- animal hospital and veterinary clinic.
- antique restoration.
- assembly, maintenance and repair of agricultural implements and equipment.
- assembly of small mechanical devices and components.
- automobile painting, upholstery, rebuilding, renovation, conditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
- custom butchering, meat curing and processing.
- household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and etc.
- uses determined by the Board of Zoning Appeals to be similar in character to those listed above.

9. The Board of Zoning Appeals may by variance increase by 100% or decrease by 15% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

SECTION IV. That Sections 3-B and 3-E of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas" as adopted on December 12, 1984 are hereby repealed.

SECTION V. That a new Subsection F. entitled "RURAL HOME OCCUPATIONS PERMITTED" is hereby added to Section 3 "HOME OCCUPATIONS" of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas" as adopted on December 12, 1984, and subsequently amended.

SECTION VI. That this Resolution shall take effect and be in force from and after its adoption and publication once in the official County paper.

PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this 26th day of October, 1988.
Mark F. Schroeder, Chairman
/s/Billy G. McCray, Chairman Pro tem
/s/David Bayouth, Commissioner
/s/Tom Scott, Commissioner
/s/Bernard A. Hentzen, Commissioner

ATTEST: (SEAL)
/s/Don Wright, County Clerk
APPROVED AS TO FORM:
/s/Robert R. Arnold,
County Counselor
(N 11)

NEW WORDING UNDERLINED

* NEW SUBSECTION(S) CIRCLED - O

STATE OF KANSAS)
Sedgwick County) ss.

REBECCA E. FROCK, being first duly sworn, Deposes

and says: That he is ADVERTISING MANAGER of

THE DAILY REPORTER

a daily Newspaper printed in the State of Kansas, and published in and of general circulation in Sedgwick County, Kansas, with a general paid circulation on a daily basis in Sedgwick County, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

Said newspaper is a daily published Monday through Friday and has been so published continuously and uninterrupted in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office of Derby, Kansas, in said County as second class matter.

That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper for 1 consecutive WEEK, the first publication thereof being made as aforesaid on the 11TH day of NOVEMBER, 1988, with subsequent publications being made on the following dates:

- _____ , 19 _____
- _____ , 19 _____
- _____ , 19 _____
- _____ , 19 _____
- _____ , 19 _____
- _____ , 19 _____

Elva R. Meadows

Subscribed and sworn to before me this 14TH day of NOVEMBER, 1988

Elva R. Meadows

Notary Public



Printer's fee \$ 52.44

Additional copies \$ _____

(Published in The Daily Reporter on November 11, 1988)

RESOLUTION 348-1988

A RESOLUTION AMENDING THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS" AS PUBLISHED IN SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION, EDITION OF OCTOBER 5, 1984 AND ADOPTED BY THE BOARD OF SEDGWICK COUNTY COMMISSIONERS ON DECEMBER 12, 1984 AND BECAME EFFECTIVE JANUARY 1, 1985, BY AMENDING SECTIONS 3-B, 3-E AND ADDING A NEW SECTION 3-F TO THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS"; ALL IN ACCORDANCE WITH THE AUTHORITY GRANTED IN SECTION 17.C THEREOF.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

SECTION I. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 12, 1984, Section 3-"HOME OCCUPATIONS"; Subsection B-"DEFINITION"; shall be amended to read as follows:

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building or when permitted by Subsections C, and F., within a structure that is accessory to a residential building.

SECTION II. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, KANSAS AS ADOPTED ON DECEMBER 12, 1984, SECTION 3-"HOME OCCUPATIONS"; Subsection E-"PARTICULAR HOME OCCUPATIONS PROHIBITED"; shall be amended to read as follows:

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:
 1. Animal hospitals, except as provided in Subsection F. hereof.
 2. Auto and other vehicle repair except as provided in Subsection F. hereof.
 3. Funeral homes.
 4. Kennels and stables when carried on as a business activity.
 5. Medical or dental clinics or hospitals.
 6. Nursery schools and day care centers having more than 4 students at a time; unless specifically permitted by the district regulations.
 7. Renting of trailers, cars or other equipment.
 8. Restaurants except as provided in Subsection F. hereof.
 9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
 10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
 11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under Subsection F.7. hereof.

SECTION III. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 12, 1984, a new Section 3-"HOME OCCUPATIONS"; Subsection F-"RURAL HOME OCCUPATIONS PERMITTED"; shall be added to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D, rural home occupations are allowed on sites in the "R" rural residential and "R1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the items

are stored shall be screened from view by a fence or other structure. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used for screening purposes shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.

5. No more than two (2) persons other than persons occupying the dwelling unit at their residence shall be employed in any home occupation.

6. The provisions of Subsections C.1.a., C.1.c., C.3.b. and C.3.c. shall apply.

7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.

8. Uses permitted in addition to those allowed by Subsection D, include:

- animal hospital and veterinary clinic.
- antique restoration.
- assembly, maintenance and repair of agricultural implements and equipment.
- assembly of small mechanical devices and components.
- automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage subject to screening as set out in Article F.4 above regarding use of one location.
- custom butchering, meat curing and processing.
- household dining establishments conducted within the main residence by prior reservation only, limited to patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, stoneware figurines, or other ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the Board of Zoning Appeals to be similar in character to those listed above.

9. The Board of Zoning Appeals may by variance increase by 10% or decrease by 75% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

SECTION IV. That Sections 3-B and 3-E of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas" as adopted on December 12, 1984 are hereby repealed.

SECTION V. That a new Subsection F, entitled "RURAL HOME OCCUPATIONS PERMITTED" is hereby added to Section 3-"HOME OCCUPATIONS" of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas", as adopted on December 12, 1984, and subsequently amended.

SECTION VI. That this Resolution shall take effect and be in force from and after its adoption and publication once in the official County paper.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS AT WICHITA, KANSAS, THIS 30TH DAY OF OCTOBER, 1988.

Mark F. Schroeder, Chairman
/s/ Billy G. McCray, Chairman pro tem
/s/ David Bayouth, Commissioner
/s/ Tom Scott, Commissioner
/s/ Bernard A. Hentzen, Commissioner
ATTES: (SEAL)
/s/ Don Wright, County Clerk
APPROVED AS TO FORM:
/s/ Robert R. Arnold,
County Counselor
(N 11)

RESOLUTION 248-1988

A RESOLUTION AMENDING THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS" AS PUBLISHED IN BOOK FORM BY THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION, EDITION OF OCTOBER 5, 1983 AND ADOPTED BY THE BOARD OF SEDGWICK COUNTY COMMISSIONERS ON DECEMBER 12, 1984 AND BECAME EFFLCTIVE JANUARY 1, 1985; BY AMENDING SECTIONS 3-B, 3-E AND ADDING A NEW SECTION 3-F TO THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS"; ALL IN ACCORDANCE WITH THE AUTHORITY GRANTED IN SECTION 17.C THEREOF.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

SECTION I. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 12, 1984, Section 3-"HOME OCCUPATIONS"; Subsection B- "DEFINITION", shall be amended to read as follows:

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

SECTION II. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, KANSAS AS ADOPTED ON DECEMBER 12, 1984, SECTION 3- "HOME OCCUPATIONS"; Subsection E. - "PARTICULAR HOME OCCUPATIONS PROHIBITED", shall be amended to read as follows:

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:
1. Animal hospitals, except as provided in Subsection F. hereof.
 2. Auto and other vehicle repair except as provided in Subsection F. hereof.
 3. Funeral homes.
 4. Kennels and stables when carried on as a business activity.
 5. Medical or dental clinics or hospitals.
 6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
 7. Renting of trailers, cars or other equipment.

8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under Subsection F.7. hereof.

SECTION III. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 12, 1984, a new Section 3- "HOME OCCUPATIONS"; Subsection F- "RURAL HOME OCCUPATIONS PERMITTED", shall be added to read as follows:

- F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:
1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
 2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
 3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
 4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 200 feet from adjacent property lines or public street right-of-way. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.
 5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.

6. The provisions of Subsections C.1.a., C.1.c, C.3.b, and C.3.c shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
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 - custom butchering, meat curing and processing.
 - household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
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 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
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 - uses determined by the Board of Zoning Appeals to be similar in character to those listed above.
9. The Board of Zoning Appeals may by variance increase by 100% or decrease by 75% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

SECTION IV. That Sections 3-B and 3-E of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas" as adopted on December 12, 1984 are hereby repealed.

SECTION V. That a new Subsection F. entitled "RURAL HOME OCCUPATIONS PERMITTED" is hereby added to Section 3 "HOME OCCUPATIONS" of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas", as adopted on December 12, 1984, and subsequently amended.

SECTION VI. That this Resolution shall take effect and be in force from and after its adoption and publication once in the official County paper.

PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this 26th day of October, 1988.

Mark F. Schroeder, Chairman
Absent

Billy Q. McCray, Chairman pro tem
Billy Q. McCray

David Bayouth, Commissioner
David Bayouth

Tom Scott, Commissioner
Tom Scott

Bernard A. Hentzen, Commissioner
Bernard A. Hentzen



Don Wright
Don Wright, County Clerk

(SEAL)

APPROVED AS TO FORM:

Robert R. Arnold
Robert R. Arnold, County Counselor

**WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT**

October 27, 1988

TO: Richard Euson, Assistant County Counselor
FROM: Robert L. Young, Principal Planner, Current Plans
SUBJECT: Resolution to Amend the Sedgwick County Zoning Resolution to Include Rural Home Occupations

Attached for your review and approval as to form, are an original and two copies of a resolution which will amend the Sedgwick County Zoning Resolution to include rural home occupations in the "R" and "R-1" zoning districts. The Board of Sedgwick County Commissioners took action to approve this resolution during their October 26, 1988 meeting, subject to a change which would allow the Board of Zoning Appeals to reduce the minimum size of tracts upon which a rural home occupation is conducted from twenty acres to five acres. We have modified the provisions of Section III, F.9., of the resolution to conform to the Commission's wishes.

If you find that the resolution is properly formatted, would you please secure the signatures of the Sedgwick County Commissioners and return one copy to our office for publication purposes? Thanks.

RLY:blv
Attachments

FILE COPY

RESOLUTION

A RESOLUTION AMENDING THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS" AS PUBLISHED IN BOOK FORM BY THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION, EDITION OF OCTOBER 5, 1983 AND ADOPTED BY THE BOARD OF SEDGWICK COUNTY COMMISSIONERS ON DECEMBER 12, 1984 AND BECAME EFFECTIVE JANUARY 1, 1985; BY AMENDING SECTIONS 3-B, 3-E AND ADDING A NEW SECTION 3-F TO THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS"; ALL IN ACCORDANCE WITH THE AUTHORITY GRANTED IN SECTION 17.C THEREOF.

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 6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
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8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
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 2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
 3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
 4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 200 feet from adjacent property lines or public street right-of-way. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.
 5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.

6. The provisions of Subsections C.1.a., C.1.c, C.3.b, and C.3.c shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
 - uses determined by the Board of Zoning Appeals to be similar in character to those listed above.
9. The Board of Zoning Appeals may by variance increase by 100% or decrease by 75% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

SECTION IV. That Sections 3-B and 3-E of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas" as adopted on December 12, 1984 are hereby repealed.

SECTION V. That a new Subsection F. entitled "RURAL HOME OCCUPATIONS PERMITTED" is hereby added to Section 3 "HOME OCCUPATIONS" of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas", as adopted on December 12, 1984, and subsequently amended.

SECTION VI. That this Resolution shall take effect and be in force from and after its adoption and publication once in the official County paper.

PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this _____ day of _____, 1988.

_____, Chairman
Mark F. Schroeder

_____, Chairman pro tem
Billy Q. McCray

_____, Commissioner
David Bayouth

_____, Commissioner
Tom Scott

_____, Commissioner
Bernard A. Hentzen

ATTEST:

Don Wright, County Clerk
(SEAL)

APPROVED AS TO FORM:

Robert R. Arnold, County Counselor

**WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT**

DATE: October 17, 1988

TO: Board of Sedgwick County Commissioners

FROM: Marvin S. Krout, Director of Planning *M Krout*

SUBJECT: DR 87-15. Possible amendment to the Sedgwick County Zoning Resolution to expand the home occupation provisions in the "R" and "R-1" zoning districts.

Attached is a delineated copy of a proposed resolution which would amend the Sedgwick County Zoning Resolution to provide for a wider range of uses as home occupations in the rural areas of the County. This item is scheduled for consideration by the Board of Sedgwick County Commissioners during the regularly scheduled meeting of October 26, 1988.

BACKGROUND: At the request of a member of the Board of Sedgwick County Commissioners, the Planning Department drafted a proposal to amend the Sedgwick County Zoning Resolution to include a list of rural home occupations. Following a series of meetings with members of the Metropolitan Area Planning Commission, the proposals contained in the attached delineated copy of the amending resolution were reviewed in an advertised public hearing before the Planning Commission on September 29, 1988. At the conclusion of the public hearing, the Planning Commission took action to recommend that the proposed amendment be adopted. The motion on the recommendation of adoption was approved on a vote of seven in favor, one opposed, and two absent.

The purpose of the amendment is to permit residents on large tracts in rural areas a wider range of uses and more flexibility with home occupations. Currently, home occupations throughout the county are limited to offices, home crafts, and personal services. The area that can be devoted to home occupations is limited, no outdoor storage is permitted, and only one employee is allowed on the property who is not an occupant of the residence.

In the rural areas of the county, there is more separation between homes, and home occupations are less likely to disturb neighbors. Some of the additional home occupations in rural areas that would be permitted in our proposal include animal hospitals, repair of vehicles and equipment, light assembly, bed and breakfast establishments, and similar uses. More flexibility

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Page 2

would be permitted on the maximum area that can be devoted to home occupations, outdoor storage would be permitted if screened from view, two non-occupants could be employed, and the sign restrictions would be modified. The County Board of Zoning Appeals would have authority to be more flexible in these areas.

We think that the proposed amendment will still provide adequate protection to neighboring property owners. There are still standards to prevent noise, glare, air pollution, etc., from affecting neighbors. Setbacks and screening requirements would limit outdoor storage. More intensive use of the property would require a decision by the BZA at a public hearing with notice to nearby property owners.

RECOMMENDATION: It is recommended that the amendment to the Sedgwick County Zoning Resolution be adopted.

MSK:RLY:rme
Attachment

cc: Ron Worley, County Zoning Administrator
Richard Euson, Assistant County Counselor

Published in The Daily Reporter on _____, 1988

RESOLUTION

A RESOLUTION AMENDING THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS" AS PUBLISHED IN BOOK FORM BY THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION, EDITION OF OCTOBER 5, 1983 AND ADOPTED BY THE BOARD OF SEDGWICK COUNTY COMMISSIONERS ON DECEMBER 12, 1984 AND BECAME EFFECTIVE JANUARY 1, 1985; BY AMENDING SECTIONS 3-B, 3-E AND ADDING A NEW SECTION 3-F TO THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS"; ALL IN ACCORDANCE WITH THE AUTHORITY GRANTED IN SECTION 17.C THEREOF.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

SECTION I. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 14, 1984, Section 3-"HOME OCCUPATIONS"; Subsection B- "DEFINITION", shall be amended to read as follows:

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and E., within a structure that is accessory to a residential building.

SECTION II. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, KANSAS AS ADOPTED ON DECEMBER 14, 1984, SECTION 3- "HOME OCCUPATIONS"; Subsection E. - "PARTICULAR HOME OCCUPATIONS PROHIBITED", shall be amended to read as follows:

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity, ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.

6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under Subsection F.7. hereof.

SECTION III. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 14, 1984, a new Section 3- "HOME OCCUPATIONS"; Subsection F- "RURAL HOME OCCUPATIONS PERMITTED", shall be added to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 200 feet from adjacent property lines or public street right-of-way. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following

installation and throughout the year every year thereafter.

5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.
6. The provisions of Subsections C.1.a., C.1.c, C.3.b, and C.3.c shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
 - uses determined by the Board of Zoning Appeals to be similar in character to those listed above.
9. The Board of Zoning Appeals may by variance increase by 100% or decrease by 50% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

SECTION IV. That Sections 3-B and 3-E of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas" as adopted on December 14, 1984 are hereby repealed.

SECTION V. That a new Subsection F. entitled "RURAL HOME OCCUPATIONS PERMITTED" is hereby added to Section 3 "HOME OCCUPATIONS" of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas", as adopted on December 14, 1984, and subsequently amended.

SECTION VI. That this Resolution shall take effect and be in force from and after its adoption and publication once in the official County paper.

PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this _____ day of _____, 1988.

_____, Chairman
Mark F. Schroeder

_____, Chairman pro tem
Billy Q. McCray

_____, Commissioner
David Bayouth

_____, Commissioner
Tom Scott

_____, Commissioner
Bernard A. Hentzen

ATTEST:

Don Wright, County Clerk

(SEAL)

APPROVED AS TO FORM:

Robert R. Arnold, County Counselor

EXCERPT FROM PLANNING COMMISSION MINUTES OF SEPTEMBER 29, 1988

7. Case No. DR 87-15 - Possible amendment to the Sedgwick County zoning resolution concerning the expansion of the home occupation provisions in the "R" and "R-1" zoning districts.

YOUNG stated that this is an item that staff has been working on for some with a subcommittee of the Planning Commission to expand the home occupation provisions of the Sedgwick County Zoning Resolution. What staff has proposed and sent to the Planning Commission in the package is a resolution that creates a rural home occupation section in the resolution. This would apply to rural home occupations in the "R" and "R-1" zoning districts in the County on tracts of 20 acres or more in size. At the current time there is no size limitation on any home occupations in the County. Under the new proposal, the rural home occupation can be conducted in an accessory structure up to 3,000 square feet in size. At the present, the existing resolution requires that the home occupation be conducted in the home. The proposed amendment would allow 10,000 square feet of outdoor storage when proper screening is provided. At the present time no outdoor storage for home occupations is allowed other than items that might be made on the premises. The home occupation is not to be conducted within 600 feet of another residence unless that same residence is also conducting a home occupation. In the proposed amendment there would be two persons outside the home allowed to be employed. Under the current resolution, only one person outside the home may be employed. YOUNG said that there are a broad range of uses that are added to this particular rural category. They include: animal hospitals, veterinary clinics, repair and maintenance of equipment, automotive repairs, bed and breakfast establishments, blacksmith and welding shops, contractor storage yards, custom feed processing and home dining establishments. He said that in the new proposal, the Board of Zoning Appeals could vary the conditions of approval of several of these different types of home occupations and they could make a judgment on other types that would be allowed as a home occupation in the "R" and "R-1" districts. Staff is recommending that this resolution be adopted.

GARDNER felt that as a supplemental comment, and he did not want to complicate the matter, but they have discussed that when they adopted countywide zoning, one of the flaws in the adoption process was that they applied a rural residential category countywide into rural areas that probably ought to have another category of designation, and this is a fix up attempt here at dealing with that, but if they were going to say what is the best way to deal with the problem, he felt that they have had more or less a consensus that rather than this approach, a different category for those areas that are predominately rural would be more appropriate. He said that he was not trying to complicate things on a basis of saying that this should not be adopted, but just suggesting that there is another way to do it; it is perhaps a little bit more complex. You have got to deal with the real question at hand which is, "what is the most appropriate category for those rural areas, and should it allow and spell out different kinds of things than we are dealing with here?" GARDNER said that this has a lot of compromise in it; it is pretty well thought out, but it is not as good an approach as another category would be for those predominately rural areas. On the heels of their conversation regarding updating the Comprehensive Plan and comments made by some of the persons that spoke to them about a revised zoning ordinance, he felt it was appropriate to recognize that another category was probably the better answer here as opposed to adopting what they have at hand. If they adopt what they have at hand, he would personally feel

better thinking that they were going to seriously consider a revised rural category or a new rural category as an alternative at some point in the future before they would maybe come back to this one and take some of this out. He said that it is a little bit complex but it ought to be dealt with perhaps differently than the way they are approaching it if they were going to do it the best of ways available.

SHERMAN agreed with Gardner that it would probably be best done another way, but if they were to put this off and to look into a process they may go through to create an agricultural district or some other district, it would probably not encompass all of the properties that are encompassed by this because there would probably be a number of pieces of property that would qualify for home occupations under this and would not end up being classified as agricultural or rural.

MOTION: That this item be postponed for further study. Miles moved, Gardner seconded.

MILES stated that he did not like this proposal at all. It is too hard to police the way it is set up, and all that it is going to do is create more jobs to police it.

GARDNER stated that he would appreciate a serious look at an alternative category to compare, and he imagined that in preparation of that, it might be appropriate to have an explanation of what difficulties they would likely encounter in its adoption and implementation. Speaking to Krout, GARDNER said that there are points where they have differences of opinion, and that Krout had mentioned on several occasions another zoning category is the best way to handle something, just to implement a new category, and what he is hearing from the Planning Commission is an opportunity to consider one realistically to deal with that and kind of shoving the ball his way and it was a good chance to see what the possibilities are. GARDNER said that personally he felt they would be better off to compare the two alternatives and consider an adoption of one or the other on their relative merit in terms of which would best accomplish what they are trying to do.

SHERMAN commented that if they are talking about postponing this to consider the alternative of another zoning district, that is one thing. If they are postponing it with the hopes that they are going to come up with a better document than this accomplishing the same thing, he felt they were wasting their time. There was a lot of time put in by staff to come up with this, and he did not feel that they were going to do any better.

GARDNER said that he did not dispute that, but felt what Miles was saying is what they have been alluding to and is that it probably would be good to look at that rural category designation and see what is involved and how complex it is, and whether or not if that was adopted, this should be tailed back in or not.

SHERMAN said that before they vote on it he would like to get a little bit of input from staff on how long a process they think it would be and what impact they think it would be on that kind of delay based on some of the problems identified.

MILES commented that they could pass it now and it goes through, then they go back and study it. They will probably have a whole deal of little groups out there that will get grandfathered. He would just as soon leave it like it is until they can get it like it should be.

BRINEGAR said that he did not have too much of a problem with the way it is written. He would like to know a little more of where their problems are; it looks to be very restrictive to

him. He did not disagree with Gardner's comments that maybe another district might be a good way to approach it, but he personally did not have any problems with it. The acreage restriction, the distance, etc., are basically going to preclude the close in rural residential districts. He said that he was ready to go with this now.

KROUT said that staff was in agreement that it was worthwhile to look at that other district, but felt that it was a big job to tackle. When you think about one-half mile outside Colwich, what are you going to zone it, the new agricultural district, or are you going to leave it in this district? If you leave it in this district then some of the flexibility is revolting and would not apply, so there is one question which is where do you draw the line through the whole county looking property by property at where you are going to change the zoning, and then that is a remapping, and you are also probably going to be creating a zoning category which will have a larger lot size than two acres. Harvey County zoning ordinance has a minimum 40 acre lot size. He said that he was not saying that was wrong, but they were certainly taking away rights of someone to divide their property into 2-acre or 5-acre lots that they have today, and staff would have to advertise and send notices to every affected property owner in the county once they have finally come to some internal agreement about where that map is. He felt that it is something that ought to be tackled and discussed, but felt that it is a very long process to come up with something like that and the product that the subcommittee has come up with is a much better product than staff brought to the Commission initially and it builds in a lot of protection and they are satisfied with it.

GALBRAITH felt that a change would be an expensive process. They would pay the Security Abstract staff for an ownership list of everybody in the County.

GARDNER said that when they went countywide, they did not go that route. They went through a very public advertising process and adoption process.

GALBRAITH pointed out that they were establishing zoning at that time. What Gardner is suggesting now is an amendment and a change of zoning on everyone's property, and under the statute it requires that they be notified.

GARDNER said that the thing that they are dealing with is to some degree a downzoning that would have some direct benefit to those in specific rural locations that would give them some latitude in terms of home occupations and things they can do. He recalled that there used to be basically a 3-mile ring around each of the small cities that were participates in the planning process, and typically there was "R-1" zoning inside of those rings, and outside of those rings it was unzoned. What they are dealing with here is a concept that says maybe a rural or an agricultural category is appropriate outside a 1 mile or 2-mile ring around the smaller cities, and that option should be made open to people based on some improved uses that are a little less restrictive in the rural area than they currently have. What you do is provide an option to people that if they did not want to be zoned back to that, they could opt to identify their property as such and retain the existing zoning, or something to that effect. He felt that they could delineate areas around the smaller cities that ought to fall under the "R" Rural Residential zoning category. Outside of that, to adopt an agricultural zoning that would grant greater freedom and would be more appropriate than perhaps incorporating this countywide to everything outside the city limits.

GOEBEL said that he thought this was good on a 20-acre tract and 600-foot separation between the houses, and felt that

they were appropriate even on the rural residential inside the 3-mile ring when a certain site seems to be appropriate. They are talking about maybe a 2-acre tract in the agricultural zoning district being the minimum size and felt that would be far less restrictive than what is presented here. He said that he would have a little more problem with the location of the homes adjacent to each other and some of the bad things that this is going to prevent with its restrictions and he was not so sure that this is not a better set up than addressing it with another zoning classification.

SHERMAN said that if these uses were permitted in a rural agricultural zoning, he would want some of these same restrictions incorporated into the zoning resolution although maybe not as strict.

RON WORLEY, County Zoning Administrator, stated that they have been reviewing this in painstaking detail for over a year, and he is comfortable with the product. Maybe it does not contain everything that he would want, or everything that everybody in here would want, but felt that it was a big improvement over the first draft that they saw which was aimed at a 5-acre tract. He mentioned that those Commissioners that were on the Planning Commission in 1984 may recall that he supported an agricultural zoning district at the time they were discussing countywide zoning, and it was determined that there simply was not time enough to do it at that time and still get countywide zoning adopted. He said that it would be fair to say that it was a year's process to get an agricultural zoning district established, and maybe that is a tool that needs to be done. He said that he was not opposed to agricultural zoning. The public by and large thinks there is agricultural zoning out there at the current time. He felt that in the meantime, 1 year to 18 months, as Goebel pointed out, possibly after that for some of those districts that probably would not be included in the agricultural zoning, this might very well be a workable document and might be something that would provide them with some flexibility. The difficulty with waiting 12 to 18 months, if and when you get an agricultural zoning district, is that inbetween time this body and the County Commission is going to have an opportunity to see some applications that you really are not going to be very happy to be dealing with. He said that from the last 90 to 120 days he has been stalling some people who wanted to file an application, telling them that probably their best chance of getting it approved is waiting until this document gets considered and it is possible that they would fit under this document, and if they did, they would not need to file that "E" Light Industrial zoning application that very clearly would be 3 acres of spot zoning in the middle of a residential island of 3 or 4 miles in any direction. WORLEY continued that if they are talking about a six months to a one year delay, those applications will be filed. Those people do not have any alternative and they will have to take their chances with this body and they very well might get turned down. But those are applications that will be difficult for the Planning Commission to take a look at because clearly putting "E" Light Industrial zoning in some of those locations has, in the past, proved uncomfortable for this body and also for the County Commission. He said that although he was not opposed, and probably would support the idea of agricultural zoning out there, in the meantime this document will be a workable document.

GOEBEL felt that it would be damaging to have this document wait, and even if it wasn't delayed for study, he felt that they could still ask for the study to be done. He sensed that they needed to move along and let a few of these things take place.

SHERMAN said that their idea initially for beginning this was that there were a number of people out there, regardless of their location whether they are in 3 miles of one of the smaller towns or not, in order to help support themselves needed to

engage in some sort of activity which normally would require some sort of heavier zoning, and they went through a pretty lengthy list and came up with a compromise, and as Worley stated, if someone came in on some of these pieces and wanted to rezone to "E" Light Industrial, he would vote against it because there are so many things in that "E" Light Industrial that he would not want them to do although he might really be in agreement with this specific use that they wanted, and that is why he kind of went along with this type of document. He said that he would just as soon vote on this as postpone it.

MILES stated that his biggest problem with the document is that he does not like to see a body shop and some of this other stuff started out in the middle of the country, and he did not see any way they can keep it policed. He felt that this board is just turning a bag of worms loose.

VOTE ON THE MOTION: It failed by a vote of 2 in favor (Miles and Brown) and 6 opposed (Brinegar, Crockett, Fairbanks, Gardner, Goebel and Sherman). Moore and Parsons were absent.

MOTION: That the Planning Commission adopt the amendment to the Sedgwick County Zoning Resolution concerning the expansion of the home occupation provisions in the "R" and "R-1" zoning districts, but show a direction to continue studying this, and especially look for a zone modification or an intermediary zone that has not been approached. Fairbanks moved, Goebel seconded and it carried with a vote of 7 in favor (Fairbanks, Goebel, Brinegar, Brown, Crockett, Gardner and Sherman) and 1 opposed (Miles). Moore and Parsons were absent.

**WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT**

October 6, 1988

TO: Richard Euson, Assistant County Counselor
FROM: Robert L. Young, Principal Planner, Current Plans *R.L.Y.*
SUBJECT: Draft of Delineated Resolutions to Amend the Sedgwick County Zoning Resolution

Attached are two delineated resolutions that were drafted to amend the Sedgwick County Zoning Resolution. These resolutions were considered by the Metropolitan Area Planning Commission during their regular meeting on Thursday, September 29, 1988. The Planning Commission took action to recommend that the resolution concerning Rural Home Occupations be adopted by the Board of Sedgwick County Commissioners. The Planning Commission deferred action on the resolution concerning firewood sales in the "R" and "R-1" zoning districts pending clarification of the term "rodeo". We expect the Planning Commission to review and take action on this resolution during their meeting of October 13, 1988.

If the Planning Commission takes action on the resolution on that date, we anticipate scheduling both resolutions for consideration by the Board of Sedgwick County Commissioners during their October 26, 1988 meeting.

In preparation for that event, would you please review these resolutions for legal sufficiency and advise us of any deficiencies you may discover? We will forward the standard undelineated copies to your office for signature purposes when the agenda material is transmitted for scheduling. If you have any questions concerning this matter, please contact me at 268-4421.

RLY:blv
Attachments

FILE COPY

**WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT**

DATE: September 20, 1988

TO: Metropolitan Area Planning Commission

FROM: Marvin S. Krout, Director of Planning *MS Krout*

SUBJECT: Public Hearing on Rural Home Occupations (DR 87-15)

Background: Attached is a delineated copy of a proposed resolution which would amend the Sedgwick County Zoning Resolution to provide for a wider range of uses as home occupations in the rural areas of the County.

This proposed resolution has been scheduled for a public hearing before the Metropolitan Area Planning Commission on September 29, 1988.

The purpose of the amendment is to permit residents on large tracts in rural areas a wider range of uses and more flexibility with home occupations. Currently, home occupations throughout the county are limited to offices, home crafts, and personal services. The area that can be devoted to home occupations is limited, no outdoor storage is permitted, and only one employee is allowed on the property who is not an occupant of the residence.

An additional purpose is to encourage continued family farm operations in the county, at a time when it is increasingly difficult for these operations to survive from farm earnings alone. The amendments give farmers more flexibility to supplement their income with additional home occupations, including some that take advantage of their farming skills, equipment, and facilities.

In the rural areas of the county, there is more separation between homes, and home occupations are less likely to disturb neighbors. Some of the additional home occupations in rural areas that would be permitted in our proposal include animal hospitals, repair of vehicles and equipment, light assembly, bed and breakfast establishments, and similar uses. More flexibility would be permitted on the maximum area that can be devoted to home occupations, outdoor storage would be permitted if screened from view, two non-occupants could be employed, and the sign restrictions would be modified. The County Board of Zoning Appeals would have authority to be more flexible in these areas.

Metropolitan Area Planning Commission
(DR 87-15)
September 20, 1988

We think that the proposed amendment will still provide adequate protection to neighboring property owners. There are still standards to prevent noise, glare, air pollution, etc., from affecting neighbors. Setbacks and screening requirements would limit outdoor storage. More intensive use of the property would require a decision by the BZA at a public hearing with notice to nearby property owners.

Hopefully, this can be an additional tool to encouraging economic development; allowing more flexibility for local entrepreneurs to begin new businesses on their homesteads, rather than having to invest initially in rental of commercial space or land. When these "cottage industries" become successful, they will outgrow the limitations of the home occupation provisions and need to find suitable commercial properties for their businesses.

RECOMMENDATION: It is recommended that the Metropolitan Area Planning Commission make a recommendation to the Board of Sedgwick County Commissioners that the amending resolution be adopted.

MSK:RLY:rme
Attachment

cc: Ron Worley, County Zoning Administrator
Wichita Board of Realtors, c/o Lynda Tousley, 540 S.
Broadway, 67202
Wichita Area Builders Association, c/o Wesley E. Gaylon,
President CEO, 730 N. Main, Suite 1, 67203
Building Owners & Managers Association, c/o Joyce Smith,
Executive Director, J.F.S. Management, 250 N. Rock Road,
Suite 395, 67206
Wichita Area Chamber of Commerce, 350 W. Douglas, 67202

Published in The Daily Reporter on _____, 1988

RESOLUTION

A RESOLUTION AMENDING THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS" AS PUBLISHED IN BOOK FORM BY THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION, EDITION OF OCTOBER 5, 1983 AND ADOPTED BY THE BOARD OF SEDGWICK COUNTY COMMISSIONERS ON DECEMBER 12, 1984 AND BECAME EFFECTIVE JANUARY 1, 1985; BY AMENDING SECTIONS 3-B, 3-E AND ADDING A NEW SECTION 3-F TO THE "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS"; ALL IN ACCORDANCE WITH THE AUTHORITY GRANTED IN SECTION 17.C THEREOF.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

SECTION I. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 14, 1984, Section 3-"HOME OCCUPATIONS"; Subsection B- "DEFINITION", shall be amended to read as follows:

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

SECTION II. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, KANSAS AS ADOPTED ON DECEMBER 14, 1984, SECTION 3- "HOME OCCUPATIONS"; Subsection E. - "PARTICULAR HOME OCCUPATIONS PROHIBITED", shall be amended to read as follows:

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:
1. Animal hospitals, except as provided in Subsection F. hereof.
 2. Auto and other vehicle repair except as provided in Subsection F. hereof.
 3. Funeral homes.
 4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
 5. Medical or dental clinics or hospitals.

6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under Subsection F.7. hereof.

SECTION III. That upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 1988, after notice and public hearing as provided by law under authority granted by Section 17.C of the Zoning Regulations for the unincorporated area of Sedgwick County, Kansas as adopted on December 14, 1984, a new Section 3- "HOME OCCUPATIONS"; Subsection F- "RURAL HOME OCCUPATIONS PERMITTED", shall be added to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 200 feet from adjacent property lines or public street right-of-way. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following

installation and throughout the year every year thereafter.

5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.
6. The provisions of Subsections C.1.a., C.1.c, C.3.b, and C.3.c shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
 - uses determined by the Board of Zoning Appeals to be similar in character to those listed above.
9. The Board of Zoning Appeals may by variance increase by 100% or decrease by 50% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

SECTION IV. That Sections 3-B and 3-E of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas" as adopted on December 14, 1984 are hereby repealed.

SECTION V. That a new Subsection F. entitled "RURAL HOME OCCUPATIONS PERMITTED" is hereby added to Section 3 "HOME OCCUPATIONS" of the "Sedgwick County Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas", as adopted on December 14, 1984, and subsequently amended.

SECTION VI. That this Resolution shall take effect and be in force from and after its adoption and publication once in the official County paper.

PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this _____ day of _____, 1988.

_____, Chairman
Mark F. Schroeder

_____, Chairman pro tem
Billy Q. McCray

_____, Commissioner
David Bayouth

_____, Commissioner
Tom Scott

_____, Commissioner
Bernard A. Hentzen

ATTEST:

Don Wright, County Clerk

(SEAL)

APPROVED AS TO FORM:

Robert R. Arnold, County Counselor

DR 8705

Send copy of aquada
material to:

✓ Mark Weninger
5159 No. 119th St. W.
Manly, Kans. 67101

✓ Larry Daniels
Terra Tech Land Surveying Inc.
245 W. Dewey
Wichita, Kans. 67202

+ CC's on back
page.

Duby

(Published in The Daily Reporter on
September 7, 1988)

OFFICIAL NOTICE

**TO WHOM IT MAY CONCERN AND TO
ALL PERSONS INTERESTED:**

**NOTICE IS HEREBY GIVEN THAT ON
THURSDAY, SEPTEMBER 29, 1988, the**

**Wichita-Sedgwick County Metropolitan
Area Planning Commission, in the City**

**Council Chambers, First Floor, City Hall,
453 North Main Street, Wichita, Kansas,**

**beginning at 1:30 p.m., will consider the
following changes to the Zoning**

**Regulations for the unincorporated areas
of Sedgwick County, Kansas:**

**An amendment to Section 3, "HOME
OCCUPATIONS"; E "PARTICULAR**

HOME OCCUPATIONS PROHIBITED";

**and the addition of a new subsection F,
entitled "RURAL HOME OC-**

**CUPATIONS PERMITTED" which
would permit the establishment of a**

**broad range of uses as home occupations
on tracts that are twenty (20) acres or**

**more in size and zoned the "R" Rural
Residential District or the "R-1" Suburban**

Residential District.

**An amendment to Section 4, "R"
RURAL RESIDENTIAL DISTRICT, A,
USES PERMITTED", subsections 1 and 9,**

**and Section 5, "R-1" SUBURBAN
RESIDENTIAL DISTRICT, A, USES
PERMITTED", subsections 1 and 10,**

**which would permit the raising and
wholesaling of nursery stock and the**

**raising and retalling of Christmas trees
on land zoned the "R" Rural Residential**

or the "R-1" Suburban Residential Dis-

**tricts and the storage and sale of firewood
on tracts twenty (20) acres or more in**

**size. The amendment would also permit
rodeo arenas, greenhouses for wholesal-**

**ing and research purposes and storage
and sale of firewood on tracts less than**

**twenty (20) acres in size as conditional
uses in the "R" Rural Residential and**

"R-1" Suburban Residential Districts.

**Copies of the proposed amendments are
available upon request from the Wichita-**

Sedgwick County Metropolitan Area Plan-

ning Department, and all persons in-

**terested in said matter will be heard at this
time concerning their views and wishes,**

**and any protest against any of the
provisions of the proposed changes to the**

**Sedgwick County Zoning Resolution will be
considered by the Commission as law if**

provided.

WITNESS MY HAND this 10th day of

September, 1988.

Marvin S. Krost, Secretary

Wichita-Sedgwick County

Metropolitan Area Planning Commission

(S 7)

(Published in The Daily Reporter on _____, 1988)

OFFICIAL NOTICE

TO WHOM IT MAY CONCERN AND TO ALL PERSONS INTERESTED:

NOTICE IS HEREBY GIVEN that on September ²⁹~~28~~, 1988, the Wichita-Sedgwick County Metropolitan Area Planning Commission, in the City Council Meeting Room, First Floor, City Hall, 455 North Main Street, Wichita, Kansas, in a meeting beginning at 1:30 p.m., will consider the following changes to the Zoning Regulations for the unincorporated areas of Sedgwick County, Kansas:

An amendment to Section 3, "HOME OCCUPATIONS", E. "PARTICULAR HOME OCCUPATIONS PROHIBITED" and the addition of a new subsection F. entitled "RURAL HOME OCCUPATIONS PERMITTED" which would permit the establishment of a broad range of uses as home occupations on tracts that are twenty (20) acres or more in size and zoned the "R" Rural Residential district.

An amendment to Section 4., "R RURAL RESIDENTIAL DISTRICT, A. USES PERMITTED", subsections 1. and 9., and Section 5., "R-1 SUBURBAN RESIDENTIAL DISTRICT, A. USES PERMITTED" Subsections 1. and 10. which would permit the raising and wholesaling of nursery stock and the raising and retailing of Christmas trees on land zoned the "R" Rural Residential or the "R-1" Suburban Residential district and the storage and sale of firewood on tracts twenty (20) acres or more in size. The amendment would also permit rodeo arenas, greenhouses for wholesaling and research purposes and storage and sale of firewood on tracts less than twenty (20) acres in size as conditional uses in the "R" Rural Residential and "R-1" Suburban Residential Districts.

Copies of the proposed amendments are available upon request from the Wichita-Sedgwick County Metropolitan Area Planning Department, and all persons interested in said matter will be heard at this time concerning their views and wishes, and any protest against any of the provisions of the proposed changes of the Sedgwick County Zoning Resolution will be considered by the Commission as law provided.

WITNESS MY HAND this _____ day of _____, 1988.

MARVIN S. KROUT, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

**WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT**

August 25, 1988

TO: James Gardner II, Harley Miles and George Sherman, Planning Commissioners

FROM: Robert L. Young, Principal Planner, Current Plans *R.L.Y.*

SUBJECT: Final Draft of Rural Home Occupation Amendment

Attached is a copy of the draft of proposed amendments to the County Zoning Resolution concerning rural home occupations in the "R" and "R-1" zoning districts. The draft reflects the revisions made during your last meeting on the subject. We anticipate scheduling this proposed amendment for a public hearing before the Planning Commission on **September 29, 1988**. If this date is not appropriate or you feel the draft does not accurately reflect the latest changes, please let us know.

RLY:blw
Attachment

cc: Ron Worley, Sedgwick County Zoning Administrator
Marvin S. Krout, Director of Planning
Jack H. Galbraith, Chief Planner, Current Plans Division

FILE COPY

8-4-88

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: new elements are underlined, (~~deletions marked thru~~).

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.

11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under Subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 200 feet from adjacent property lines or public street right-of-way. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.
5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.

6. The provisions of Subsections C.1.a., C.1.c, C.3.b, and C.3.c shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
 - uses determined by the Board of Zoning Appeals to be similar in character to those listed above.
9. The Board of Zoning Appeals may by variance increase by 100% or decrease by 50% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions

or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacted on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

August 2, 1988

TO: James Gardner II, Harley Miles and George Sherman,
Planning Commissioners

FROM: Robert L. Young, Principal Planner, Current Plans *RLY*

SUBJECT: Continued Discussion of County Home Occupations

Attached is a copy of the draft of proposed amendments to the home occupation provisions of the County Zoning Resolution. I have highlighted the changes that were made during the last discussion of this matter. We hope to continue this discussion following the regular Planning Commission meeting on Thursday, August 4, 1988, in the Planning Director's Conference Room on the Tenth Floor of City Hall. Please let me know if you cannot be present for the discussion.

RLY:blw
Attachment

cc: Ron Worley, Sedgwick County Zoning Administrator
Marvin S. Krout, Director of Planning
Jack H. Galbraith, Chief Planner, Current Plans Division

7/7/88

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked-thru)~~.

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity, ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 300 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.
5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.
6. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.

- antique restoration.
- assembly, maintenance and repair of agricultural implements and equipment.
- assembly of small mechanical devices and components.
- automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
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- custom butchering, meat curing and processing.
- household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the Board of Zoning Appeals to be similar in character to those listed above.

9. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 1, 2, 3, 4, 6 and 7 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.

2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

June 28, 1988

TO: Zoning Resolution Amendment Review Subcommittee
FROM: Robert L. Young, Principal Planner, Current Plans Division
SUBJECT: Review of Rural Home Occupations and Firewood Sales

Attached is a copy of the proposed amendment to the County Zoning Resolution concerning rural home occupations. Also attached is a proposed amendment to the "R" & "R-1" Districts concerning forestry related uses and horse boarding and training facilities on larger tracts.

If time permits, we would like to discuss these items with the review subcommittee following the Subdivision Committee Meeting on Thursday, June 30, 1988. We will plan on meeting in the Planning Director's conference room on the Tenth Floor. If the Subdivision Committee meeting is lengthy, we will schedule this review for a different day.

RLY:blw
Attachments

cc: Marvin S. Krout, Director of Planning

FILE COPY

PL/6758/4

6-23-88

AMEND "R" AND "R-1" DISTRICTS

A. USES PERMITTED

1. Agriculture; including forestry and the raising and wholesaling of nursery stock; the raising and retail sales of Christmas trees; and the boarding and training of horses on tracts 40 acres or more in size.

8. Conditional Uses:
 - i. Horseriding academy; polo field; rodeo arena; and the boarding of horses on tracts of less than 40 acres in size.

 - k. Greenhouse for wholesaling and research purposes only.

 - o. Storage and sale of firewood and other severed crops.

PL1-0457

12/23/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked-thru)~~.

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity, ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. **RURAL HOME OCCUPATIONS PERMITTED.** In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 200 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning.
4. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.
5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
6. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
7. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small

- parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
- assembly of small mechanical devices and components.
- automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage.
- custom butchering, meat curing and processing.
- household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the County Zoning Administrator to be similar in character to those listed above.

8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.

4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

12/23/87

Distributed to
MAPC on 6-9-88

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

1/2
6/23/88

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), (~~deletions marked thru~~).

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
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11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 200 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning.
4. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.
5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
6. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
7. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small

parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.

- assembly of small mechanical devices and components.
 - automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
 - uses determined by the County Zoning Administrator to be similar in character to those listed above.
8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.

4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

May 18, 1988

TO: Metropolitan Area Planning Commission
FROM: Marvin S. Krout, Director of Planning
SUBJECT: Proposed Amendments to County Zoning Resolution

Attached are drafts of two suggested amendments to the County Zoning Resolution dealing with kennels and with home occupations in rural areas. Bob Young will present these two proposals to you and invite discussion on these at the Thursday luncheon session.

If you are in agreement with the general thrust of these suggested amendments, we will be requesting that you authorize a public hearing to officially consider them.

MSK:blw
Attachments

FILE COPY

PL/6599/4

12/23/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDCWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked-thru)~~.

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 2. Auto and other vehicle repair except as provided in Subsection F. hereof.
 3. Funeral homes.
 4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
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5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
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parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.

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- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage.
- custom butchering, meat curing and processing.
- household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the County Zoning Administrator to be similar in character to those listed above.

8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.

4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

including stables on property twenty or more in size used for the boarding, breeding, training or raising of horses by the occupant(s) of the premises regardless of ownership.

RE AGENDA ITEM NO.

2

WICHITA-SEDCWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

May 18, 1988

TO: Metropolitan Area Planning Commission
FROM: Marvin S. Krout, Director of Planning *MS Krout*
SUBJECT: Proposed Amendments to County Zoning Resolution

Attached are drafts of two suggested amendments to the County Zoning Resolution dealing with kennels and with home occupations in rural areas. Bob Young will present these two proposals to you and invite discussion on these at the Thursday luncheon session.

If you are in agreement with the general thrust of these suggested amendments, we will be requesting that you authorize a public hearing to officially consider them.

MSK:blw
Attachments

PL/6599/4

5/9/88

ESTABLISHING KENNEL OPERATIONS UNDER
THE SEDGWICK COUNTY ZONING RESOLUTION

It has been suggested that the Sedgwick County Zoning Resolution be amended to allow the establishment of kennel operations in zoning districts other than the "E" light industrial classification now required. Attached is a proposal that would add definitions of kennels in the resolution and provide for their establishment in the "R", "R-1", "LC" and "C" zoning districts.

In summary, the definitions distinguish between a hobby and a more commercial type kennel on the basis of number of dogs and ownership. A definition of an adult dog is also provided. Hobby kennels are defined as those housing from five to ten adult dogs owned by the property resident. Boarding, breeding and training kennels are defined as those housing five or more adult dogs, of which three or more are owned by person's other than the property resident and those housing over ten adult dogs.

In the text of the Resolution, it is proposed that Hobby Kennels be permitted as a use by right in the "R" Rural Residential and "C" General Commercial districts and by conditional use through the Board of Sedgwick County Commissioners in the "R-1" Suburban Residential and "LC" Light Commercial districts subject to a 2-acre minimum lot size unless all animals are harbored indoors with no discernible noise or odors at the property line. Outside runs may be located no closer than 200 feet from dwellings other than the owner's and 50 feet from other property lines and complete screening must be provided.

It is proposed that the Breeding/Boarding/Training Kennel be permitted as a use by right in the "C" general commercial district subject to a 5-acre minimum lot size unless all animals are harbored indoors with no discernible noise or odors at any property line and that they be permitted by conditional use through the Board of Sedgwick County Commissioners in the "R", "R-1", and "LC" districts subject to a 5-acre minimum lot size unless all animals are harbored indoors with no discernible noise or odors at any property line. Outside runs may be located no closer than 200 feet from a dwelling other than the owner's and 50 feet from other property lines and complete screening must be provided.

Under the above proposals and definitions, four adults dogs with their natural litter(s) of pups up to 12 months of age would be permitted as an accessory use of the property resident on any property under the jurisdiction of the Sedgwick County Zoning Resolution.

PL/1713/2

5/9/88

DR87-16

Possible amendments to the
Sedgwick County Zoning Resolution

Additions are underlined.

Amend Section 2 "DEFINITIONS" to include the following:

ADULT DOG: A dog over 12 months of age

KENNEL - (a) Hobby - Premises housing from five to ten adult dogs owned by the property resident.

(b) Boarding/Breeding/Training - Premises housing five or more adult dogs, three or more of which are owned by person(s) other than the property resident and premises housing over 10 adult dogs.

KENNEL SCREENING - Screening shall be provided by decorative fencing, evergreen vegetation, or landscaped earth berms maintained for the purpose of concealing the view of the animals behind such fence, vegetation, or berms from activities on adjoining properties. If fencing is used, it shall not be less than four (4) nor more than eight (8) feet in height. If fences over six (6) feet in height, evergreen vegetation or earth berms are used, a plan shall be submitted for approval to the Director of Planning and Sedgwick County Zoning Administrator.

Amend Section 4 "R" RURAL RESIDENTIAL DISTRICT"
Subsection A. "USES PERMITTED" to include the following:

Kennels (hobby)

Amend Section 4 "R" RURAL RESIDENTIAL DISTRICT,"
Subsection A. "USES PERMITTED", Subsection 8 "Conditional Uses", to include the following:

Kennels (Boarding/Breeding/Training) subject to the following conditions:

- a. Five acre minimum lot size unless all animals are harbored indoors with no discernible noise or odor at the property line.
- b. Outside runs, holding pens or other open-air type enclosures and shelters shall be located behind the front yard setback line and no closer than 200 feet from a dwelling other than the owner's or 50 feet

PL/1713/2

from adjoining property lines and complete visual screening shall be provided by fencing and/or landscape material.

- c. Additional conditions determined appropriate by the Board of Sedgwick County Commissioners.

Amend Section 5 "R-1" SUBURBAN RESIDENTIAL DISTRICT", Subsection A "USES PERMITTED", Subsection 10 "Conditional Uses" to include the following:

Kennels (Hobby) subject to the following conditions:

- a. Two acre minimum lot size unless all animals are harbored indoors with no discernible noise or odor at the property line.
- b. Outside runs, holding pens or other open-air type enclosures and shelters shall be located behind the front yard setback line and no closer than 200 feet from a dwelling other than the owner's or 50 feet from adjoining property lines and complete visual screening shall be provided by fencing and/or landscape material.
- c. Additional conditions determined appropriate by the Board of Sedgwick County Commissioners.

Kennels (Boarding/Breeding/Training) subject to the following conditions:

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- c. Additional conditions determined appropriate by the Board of Sedgwick County Commissioners.

Amend Section 9 "LC" LIGHT COMMERCIAL DISTRICT", Subsection A. "USES PERMITTED", Subsection 66 "Conditional Uses" to include the following:

Kennels (Hobby) subject to the following conditions:

- a. Two acre minimum lot size unless all animals are harbored indoors with no discernable noise or odor at the property line.
- b. Outside runs, holding pens or other open-air type enclosures and shelters shall be located behind the front yard setback line and no closer than 200 feet from a dwelling other than the owner's or 50 feet from adjoining property lines and complete visual screening shall be provided by fencing and/or landscape material.
- c. Additional conditions determined appropriate by the Board of Sedgwick County Commissioners.

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- c. Additional conditions determined appropriate by the Board of Sedgwick County Commissioners.

Amend Section 10 "C" GENERAL COMMERCIAL DISTRICT" Subsection A "USES PERMITTED" to include the following:

Kennels (Hobby) subject to a two (2) acre minimum lot size unless all animals are harbored inside with no discernible noise or odor at the property line. Outside runs, holding pens or other open-air type enclosures and shelters shall be located behind the front yard setback line and no closer than 200 feet from a dwelling other than the owner's or 50 feet from adjoining property lines and complete visual screening shall be provided by fencing and/or landscape material.

Kennels (Boarding/Breeding/Training) subject to a five (5) acre minimum lot size unless all animals are harbored inside with no discernible noise or odors at the property line. Outside runs, holding pens or other open-air type enclosures and shelters shall be located behind the front yard setback line and no closer than 200 feet from a dwelling other than the owner's or 50 feet from adjoining property lines and complete visual screening shall be provided by fencing and/or landscape material.

12/23/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
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2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
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 - animal hospital and veterinary clinic.
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- parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
- assembly of small mechanical devices and components.
- automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage.
- custom butchering, meat curing and processing.
- household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the County Zoning Administrator to be similar in character to those listed above.

8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.

4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorator, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

FROM: Byout DATE 12/31/87

ADMINISTRATION

- Krout
- Lopez
- Eubanks
- Henderson
- Kelly
- Wasko
- Wimbley

ADVANCE PLANS

- Stockwell
- Young
- Bechtel
- Hart
- Kelley
- Kidd
- Mitchell
- Shen
- _____
- _____
- _____

CURRENT PLANS

- Galbraith
- Lytle
- Harris
- Losew
- Nagley
- Olivarez
-

GRAPHICS

- Pierce
- Commer
- Crook
- Jones

REMARKS _____

- Note & Return
- Handle
- All Staff
- Comment
- Signature
- Library
- Information
- Files
- Type
- Initial

4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

WICHITA-SEDGWICK COUNTY

Date: December 31, 1987

METROPOLITAN AREA PLANNING DEPARTMENT

TO: Board of County Commissioners

FROM: Marvin S. Krout, Director of Planning

MS Krout

SUBJECT: Rural Home Occupations

Attached is the latest draft of our proposed amendment to the home occupation provisions in the county zoning resolution. I will be setting up short meetings with each of you soon to discuss the proposal before we set a planning commission hearing.

The purpose of the amendment is to permit residents on large lots in rural areas a wider range and more flexibility with home occupations. Currently, home occupations throughout the county are limited to offices, home crafts, and personal services. The area that can be devoted to home occupations is limited, no outdoor storage is permitted, and only one employee is allowed on the property who is not an occupant of the residence.

In the rural areas of the county, there is more separation between homes, and home occupations are less likely to disturb neighbors. Some of the additional home occupations in rural areas that would be permitted in our proposal include animal hospitals, repair of vehicles and equipment, light assembly, bed and breakfast establishments, and similar uses. More flexibility would be permitted on maximum area that can be devoted to home occupations, outdoor storage permitted if screened from view, two non-occupants could be employed, and the sign restrictions would be slightly loosened. The County Board of Zoning Appeals would have authority to be more flexible in these areas.

We think that the proposed amendment will still provide adequate protections to neighboring property owners. There are still standards to prevent noise, glare, air pollution, etc., from affecting neighbors. Setbacks and screening requirements would limit outdoor storage. More intensive use of the property would require a decision by the BZA at a public hearing with notice to nearby property owners.

Hopefully, this can be a small additional tool to encouraging economic development; allowing some more flexibility for local entrepreneurs to begin new businesses on their homesteads, rather than having to invest initially in rental of commercial space or land. When these "cottage industries" become successful, they will outgrow the limitations of the home occupation provisions and need to find suitable commercial properties for their businesses.

One additional purpose is to encourage continued family farm operations in the county, at a time when it is increasingly difficult for these operations

PL/1602/2

Board of County Commissioners
December 31, 1987
Page 2

to survive from farm earnings alone. The amendments give farmers more flexibility to supplement their income with additional home occupations, including some that take advantage of their farming skills, equipment, and facilities.

MSK:rme
Attachment

cc: Ron Worley, Code Enforcement Officer
Richard Euson, Assistant County Counselor
Kim Dewey, County Manager

PL/1602/2

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

December 10, 1987

TO: Distribution Below

FROM: Robert L. Young, Principal Planner *RLY*

SUBJECT: Revision of the rural home occupation proposal

After circulating the draft of the proposed amendment to the County Zoning Resolution concerning rural home occupations to the Planning Commission and discussing the same with Jim Gardner, I have made further revisions to the previous draft of the proposal.

The revisions are highlighted on the attached versions of the proposal. They are directed to providing greater latitude to true family farming enterprises in terms of hiring employees and the type and character of the operation. Larger tracts would have fewer restrictions. Are these revisions acceptable. What are your thoughts?

Distribution:

Marvir, Krout, Director of Planning
Ron Worley, Sedgwick County Bureau of Public Services, Zoning
Jack Galbraith, Chief Planner, Current Plans Division, MAPD
Louise Olivarez, Principal Planner, Current Plans Division
Barbara Harris, Senior Planner, Advance Plans Division

Attachment

11/10/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions marked thru)~~.

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity, and not a hobby with coincidental occasional sales and use except as provided in Subsection F. hereof.
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Trucking terminal.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. **RURAL HOME OCCUPATIONS PERMITTED.** It is the purpose of this subsection to provide those engaged in the farming industry greater latitude for establishing supplemental home occupations. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required on properties 20 acres or less in size. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning.
4. No more than two (2) persons other than persons occupying the dwelling unit as their residence and their family members shall be employed full time (seasonal workers excluded).
5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply except on tracts eighty acres or more in size.
6. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
7. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.

- assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
- assembly of small mechanical devices and components.
- automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage.
- custom butchering, meat curing and processing.
- household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- stables and horseback riding facilities on tracts twenty acres or more in size.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the County Zoning Administrator to be similar in character to those listed above.

8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.

2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

11/20/87
10/28/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked thru)~~.

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity. ~~and not a hobby with incidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Trucking terminal.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

- F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are

allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to ~~2000~~³⁰⁰⁰ square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning.
4. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed.
5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
6. One on-site, ~~free-standing~~ ^(or attached to an accessory ~~to~~ building) non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
7. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
 - assembly of small mechanical devices and components.

- automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage.
- custom butchering, meat curing and processing.
- household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the ~~Board of Zoning Appeals~~ ^{County Zoning Administrator} to be similar in character to those listed above.

8. The Board of Zoning Appeals may by ~~variance~~ ^{OK} increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above ^{upto} by 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.

5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

November 13, 1987

TO: The Board of Sedgwick County Commissioners
FROM: Marvin Krout, Director of Planning *M Krout*
SUBJECT: Draft of Home Occupation Provisions for Sedgwick County
Zoning Resolution

Attached is the latest draft of the rural home occupation provisions to be proposed as an amendment to the Sedgwick County Zoning Resolution. We have circulated copies of this draft to the Metropolitan Area Planning Commission for their review and comment. We will be scheduling a public hearing for the proposed amendment before the MAPC in the future. If you have any questions or concerns about the contents of the draft, please let me know.

MK:BY:rh
Attachment

cc: Ron Worley, Sedgwick County Zoning Administrator
Richard Euson, Assistant County Counselor

11/10/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. **DEFINITION:** A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked-thru)~~.

- E. **PARTICULAR HOME OCCUPATIONS PROHIBITED:** Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity, ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Trucking terminal.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

- F. **RURAL HOME OCCUPATIONS PERMITTED.** In addition to the home occupations allowed by Subsection D., rural home occupations are

allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning.
4. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed.
5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
6. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
7. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
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 - assembly, maintenance and repair of agricultural implements and equipment.
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- automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
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 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
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3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.

5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

11/10/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked-thru)~~.

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1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity, ~~and not a hobby with incidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
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1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning.
4. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed.
5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
6. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
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 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
 - assembly of small mechanical devices and components.

- automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage.
- custom butchering, meat curing and processing.
- household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the County Zoning Administrator to be similar in character to those listed above.

8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.

5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

10/20/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked thru)~~.

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Trucking terminal.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

- F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are

allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 2000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning.
4. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed.
5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
6. One on-site, free-standing, non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
7. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
 - assembly of small mechanical devices and components.

- automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage.
- custom butchering, meat curing and processing.
- household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the Board of Zoning Appeals to be similar in character to those listed above.

8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above by 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.

5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

September 16, 1987

TO: Rich Euson, Assistant County Counselor
FROM: Robert L. Young, Principal Planner
SUBJECT: Possible amendments to the Sedgwick County Zoning Resolution

Attached are copies of three possible amendments that are being considered for the Sedgwick County Zoning Resolution. One deals with an expansion of the home occupation section of the resolution, another is intended to permit minor structures accessory to public utilities in any zoning district and the third would provide for the establishment of kennels in various districts in the County. Would you please look these over and give me your comments and concerns about anything we've proposed.

We're working with Ron Worley on these items and have had some preliminary conversations with people interested in kennel operations. Once we arrive at some acceptable proposals, Marvin Krout will forward them to the commissioners for review prior to scheduling formal public hearings before the Planning Commission. Let us know what you think as soon as you can.

Attachments: 3

B/PL/0682/03

9/8/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked-thru)~~.

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity, ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Trucking terminal.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are

allowed by exception through the Board of Zoning Appeals on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 2000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 1600 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening by structures, solid fencing and/or landscape materials from adjacent roads and properties may be required.
4. The provisions of Subsections C.1.a, C.1.c, C.3.a., C.3.b., and C.3.c. shall apply.
5. One on-site, free-standing, non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
6. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage.
 - custom butchering, meat curing and processing.

- household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the Board of Zoning Appeals to be similar in character to those listed above.

7. The Board of Zoning Appeals may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

DRAFT OF PROPOSED EXPANSION OF THE
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It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined).

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity and not a hobby with coincidental occasional sales and use.
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, unless specifically permitted by the district regulations.
10. Offsite contractor's equipment and material storage center.
11. Trucking terminal.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed as conditional uses by exception through the Board of

Zoning Appeals on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 2000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 1600 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening by structures, solid fencing and/or landscape materials from adjacent roads and properties may be required.
4. The provisions of Subsections C.1.a, C.1.c, C.3.a., C.3.b., and C.3.c. shall apply.
5. A free standing non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
6. Uses permitted in addition to those allowed by Subsection D. include:
 - antique restoration
 - assembly, maintenance and repair of agricultural implements and equipment
 - assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
 - blacksmith shop, welding, heat treating and machine shop.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statutory figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.

- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the Board of Zoning Appeals to be similar in character to those listed above.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

c. The Board of County Commissioners shall approve or disapprove any recommendation within thirty (30) days of date of submission to them. Provided, however, that upon consent of the applicant, the Board of County Commissioners may defer its approval or disapproval.

d. If the Commission recommends against the conditional use requested or in the case of a written protest filed with the County Clerk within fourteen (14) days after the Planning Commission hearing, against any proposed change or amendment, signed and acknowledged by the owners of twenty percent (20%) of the total area within one thousand (1,000) feet (excepting public streets and ways) of the area proposed to be altered, or by the owners of twenty percent (20%) of the area (excepting public streets and ways) proposed to be altered, such conditional use may not be passed except by the favorable vote of all members of the Board of County Commission

*A conditional use
is not treated
as "rezoning"
in State
law.
CBF*

F. **SPECIAL PERMIT.** The Governing Body may, by special permit and subject to such restrictions as it deems proper, permit the following uses to be located in any district:

1. Any public structure, installation or use erected, used by any department of the City, County, State, Federal Government, or any building or other structure erected and used by any public utility or improvement district, subject to F.3. below.
2. As a temporary use, not to exceed the life of the concrete and asphalt mixing plants, and accessions yards and buildings, provided they are associated with a contract with any department of the City, County or Federal Government, and subject to F.3. below.
3. The Governing Body shall not issue a special permit for the uses in F.1. and F.2. above until after the Metropolitan Area Planning Commission reviews the request and makes a recommendation to the Governing Body; and until the provisions of Section 17.A.2 of these regulations have been complied with.

*Bob -
Call me on this
and I'll
explain.*

PSF-7563

CBF

G. **FALLOUT SHELTERS.** Fallout shelters are permitted as accessory structures in any district, subject to the yard and lot coverage regulations of the district. Such shelters may be contained in other structures or may be constructed separately. Such shelter shall not be used for principal or accessory uses prohibited expressly or by implication in the district.

The Board of Zoning Appeals may permit as an exception, construction of joint shelters by two or more property owners. Where such joint shelters are permitted, the Board may waive the side and rear yard requirements on the property or

- c. The Board of County Commissioners shall approve or disapprove any recommendation within thirty (30) days of date of submission to them. Provided, however, that upon consent of the applicant, the Board of County Commissioners may defer its approval or disapproval.
- d. If the Commission recommends against the conditional use requested or in the case of a written protest filed with the County Clerk within fourteen (14) days after the Planning Commission hearing, against any proposed change or amendment, signed and acknowledged by the owners of twenty percent (20%) of the total area within one thousand (1,000) feet (excepting public streets and ways) of the area proposed to be altered, or by the owners of twenty percent (20%) of the area (excepting public streets and ways) proposed to be altered, such conditional use may not be passed except by the favorable vote of all members of the Board of County Commissioners.

*A conditional use
is not treated
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- F. **SPECIAL PERMIT.** The Governing Body may, by special permit and subject to such restrictions as it deems necessary, permit the following uses to be located in any district:
1. Any public structure, installation or use erected and used by any department of the City, County, State or Federal Government, or any building or other structure erected and used by any public utility or improvement district, subject to F.3. below.
 2. As a temporary use, not to exceed the life of the contract, concrete and asphalt mixing plants, and accessory construction yards and buildings, provided they are associated with a contract with any department of the City, County, State or Federal Government, and subject to F.3. below.
 3. The Governing Body shall not issue a special permit for the uses in F.1. and F.2. above until after the Metropolitan Area Planning Commission reviews the request and makes a recommendation to the Governing Body; and until the provisions of Section 17.A.2 of these regulations have been complied with.
- G. **FALLOUT SHELTERS.** Fallout shelters are permitted as accessory structures in any district, subject to the yard and lot coverage regulations of the district. Such shelters may contain or be contained in other structures or may be constructed separately. Such shelter shall not be used for principal or accessory uses prohibited expressly or by implication in the district.

The Board of Zoning Appeals may permit as an exception, construction of joint shelters by two or more property owners. Where such joint shelters are permitted, the Board may waive the side and rear yard requirements on the property or

Bannon Stipulations

Mr. Foster advises, and it is stipulated, that none of Mr. Foster's present activities or employment create a conflict of interest in regard to Mr. Foster's testimony in the above-captioned matter.

Mr. Foster has been retained by the plaintiff to testify on behalf of the plaintiff in regard to the application filed by plaintiff for a conditional use permit to establish a mobile home park.

Mr. Foster notes that the request does not constitute a zoning change, that is, an amendment to the zoning regulations of Sedgwick County. There is no change in the zoning district. The request is for a "special use permit". Sedgwick County zoning regulations basically permit a mobile home park to be located anywhere in the R-1 Suburban Residential District, provided a conditional use permit (special use permit) is approved for a particular site. Although the matter is not technically a rezoning case, it is the opinion of the witness that the Metropolitan Area Planning Commission standards for review as taken from the case of Golden v. City of Overland Park, 224 Kan. 591, 595, 584 P.2d 130 (1978), would serve as a useful test in permitting the Court to determine whether the actions of the county in denying the conditional use permit for a mobile home park were arbitrary and unreasonable.

The witness testifies as to the applicable eight standards as follows:

1. The character of the neighborhood

The 113.2 acre proposed site is located on the west side of Meridian between 47th Street South and 55th Street South. The site is 3,240 feet long extending south from 47th Street and mostly 1,320 feet wide with an approximately eight-acre tract not included in the northeast corner where the applicant lives. In all four directions, the land nearby is used for agriculture with scattered farmhouses, some of which are used by non-farm dwellers. Campus High School is located at the northeast corner of

See pp. 5-6 + 6-7. CRF

used plumbing, used housewares, used building material or similar display or sale in the C-2 Central Business District and only in other business and industrial districts as may be authorized by the Board of Zoning Appeals as a conditional use, unless permitted by other sections of these regulations.

- 102 Home Occupations Authorization. Home occupations that are customarily incidental to the principal use of a residential building or mobile home shall be permitted provided the residential appearance of the building or home is maintained and no undue traffic or parking problems are created.*
- A. Definition. A business, profession, occupation or trade conducted for gain or support entirely within a residential building or mobile home, or within a structure that is accessory to such a building or home.
- B. Use Limitation. In addition to all of the use limitations applicable to the district in which it is located, no home occupation shall be permitted unless it complies with the following restrictions:
1. In the A-1, R-1 and R-2 Districts.
 - (a) Goods or stock for sale on or off the premises may be stored in enclosed areas except articles which may constitute a hazard to the safety of adjacent property owners.
 - (b) No alteration of the principal residential building shall be made which changes the character thereof as a dwelling or causes goods to be displayed visibly from the dwelling or on the grounds provided the latter is not otherwise permitted by other sections of these regulations.
 - (c) No more than 20% of the area of the dwelling shall be devoted to the home occupation; provided, however, that rooms let to roomers are not subject to this limitation.
 - (d) No equipment shall be used which shall create undue noise, vibration, electrical interference, smoke or particulate matter emission, power demands or odors which would exceed that produced by normal household equipment.
 - (e) There shall be no outdoor storage or display of equipment or materials used in the home occupation, except a swimming pool for instruction.
 - (f) No more than one person other than a member of the immediate family occupying such dwelling unit shall be employed.

* Zoning permits are required only when a home occupation sign is displayed.

(g) The home occupation shall be conducted entirely within the principal residential building or in a permitted garage, storage structure or pool accessory thereto.

(h) No sign shall be permitted other than those permitted by the applicable regulations in Article 7.

2. In the R-3 and MH-1 Districts:

(a) No person other than a member of the immediate family occupying such dwelling unit shall be employed.

(b) The home occupation shall be conducted entirely within the principal residential building or manufactured home and no more than 20% of the area of the dwelling shall be devoted to the home occupation.


(c) No manufacturing or processing of any sort whatsoever shall be done and no stock shall be displayed or sold on the premises.

(d) No sign shall advertise the home occupation unless such sign is required by State statute.

C. Home Occupations Permitted. Customary home occupations include, but are not limited to, the following list of occupations provided; however, that each listed occupation shall be subject to the requirements of Section 6-102(A) and (B):

1. Artists, sculptors, authors, composers or photographers.
2. Barber and beauticians; provided that only one operator shall be permitted.
3. Boarding homes for children, day care homes and family and group day care homes.
4. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, picture framing, etc.
5. Ministers, rabbis or priests.
6. Office facilities for accountants, architects, engineers, attorneys, real estate or insurance agents, building contractors, brokers and members of similar professions, but not physicians or dentists.
7. Office facilities for full-time route salesmen or manufacturer's representatives, when no exchange of tangible goods is made on the premises.

8. Teachers, including music and dance instructions, provided that instructions shall be limited to five pupils at any time, except for occasional groups.
 9. Seamstresses or tailors.
- D. Home Occupations Prohibited. Permitted home occupations, for example, shall not in any event be deemed to include:
1. Animal kennels or hospitals or stables.
 2. Auto and other vehicle repair.
 3. Dancing schools, except as provided for in Section 6-102(C)8.
 4. Funeral homes.
 5. Grocery stores.
 6. Massage parlors.
 7. Medical or dental clinics or hospitals.
 8. Child care centers and preschools, unless specifically permitted by the district regulations.
 9. Renting of trailers, motor vehicles, tools or equipment.
 10. Restaurants.
 11. Sale of firearms or ammunition.
 12. Tourist homes.

 E. Home Occupation Authorization by Conditional Use. Notwithstanding any other provisions of these regulations and, in particular, Section 6-102(A) through (D), an application may be made to the Board of Zoning Appeals for a conditional use permit to allow a home occupation in an agricultural district which would permit a broader range of home occupations and less restrictions than otherwise required, so long as in the opinion of the Board under stated conditions that the effect upon adjacent areas is minimized to the extent feasible and the public interest is served. The intent of such a provision is to provide for a wider range of home occupational activities while at the same time protecting adjacent properties from the intrusion of incompatible uses and uses of too great an intensity. In addition to the procedures and standards for establishing conditional uses as provided for in Section 10-109, the Board may, using the use limitation restrictions of Section 6-102(B) as guidelines, permit the following variations:

1. Limited outdoor storage of goods, materials and equipment when screened wherever feasible.
2. Limited outdoor display of goods, when deemed essential to the proper merchandising of the product.
3. Limited numbers of additional employees other than members of the immediate family occupying the dwelling unit may be employed regularly or periodically.
4. Limited outdoor related activity necessary to the conduct of the home occupation.
5. A sign for such home occupation may be increased in size when warranted by the type of activity.
6. Limitations as to stated periods of operational time such as hours, days and seasons.
7. Conditions may be attached to the premises and/or to the person(s) conducting the home occupation.

- ① Left open - so it will be innovative.
- ② taking a piece of a property (if own 7100000 tract and tract is in agr. use) may require going to County.
- ③ Dereg - sec. 11 (85) page 11-6 see 103
Dereg of Protect.
page 11-2 § 11-3 Chapter 11
Special case is not an amendment to the C.O.
Read Goldwell versus City of Mission.
- tells about Golden and Supreme Court's
- read the other one from Marwin on handling the records.

U* sewer service for Bd Ave. 7



* Catchmentary Sub. Div. Type
- WSC not effected.

Forwarding bodies reqs. for waste plan adoption; Sub. Regs.

* Trash receipts in Bldg Code
- are they required.

- Delors.
- do they know about or zoning code
relating use (within 440 feet)

* 24hr permitted, outright in LC when accounted with sewer station
- minimum distance requirement practical.
- drops for all work.
- Amending code amendment, ^{yes} as
opposed to a zoning ord amendment.

* CPT - how do you handle the "use variance"
838-1563

Food, Breakfast.
Restaurants

} Health Dept.

- people drinking
- having people in for a meal.
- tourist home coming.

State Food License - restaurant

St. mold

- main plans.
- public water supply.
 - sewage disposal.
 - sanitary facilities

CPF: Harper Co. - McPherson Co. - mound ridge.
32A - 40 ac of Industrial.

extended occupation
- not to specifically defined.
- cited eight or nine items
1. employees
2. signs
3. screening
4. etc.

Condition can be attached to the applicant
(not necessary the premises).

* Conditional use ^{allowed} as an exception through the 32A.

- oil field equipment - fixed - McPherson Co.
- outdoor wine storage. - (seasonally permitted)

Vietnamese woodle factory. -

- Kick off - tying to person rather premises.

Law Behaving - Fed Co. - on market st. across from
S.A. Long. Bldg.

Co. extension acquit on - Above occupation
4% depend on other income

cost is cheaper. - 1/2 day notice.
shorter term term around.

Home Occupations, 8-23-87

✓ list w/ other similar uses.

Plan 16.

re 3. Home occupations.

✓ List of uses:

5 uses

if
520 - could require a
review.

may require - screening hours of operation
- and time limit for operation.

✓ free standing signs: - 12' free standing.

✓ No more than one employee (worker) at any one
time.

- trucks? - no. of vehicles in possession.

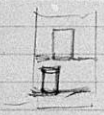
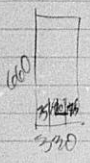
prohibit contracting equipment storage center
making terminal

Break, breakfast? up to X No. rooms.
restaurants - up to 12 seats, or X No. of seats

PAB - Break, breakfast.

Continue the list of prohibited

behind the front of the building within which
the house occupation is conducted and
no closer than fifty feet



Yes - No.
Yes/No -

THE ZONING REPORT

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HOW TO WRITE GENERAL ZONING STANDARDS

FOR CONDITIONAL AND SPECIAL USES

(Part One of two parts)

Conditional use standards have a very important planning purpose and function. Why? Because many communities are increasing the number and percentage of conditional uses listed in their zoning ordinances. Conditional use standards link the conditions imposed on such uses with planning principles.

Ten to twenty years ago, perhaps, most zoning ordinances contained, maybe, only ten conditional uses in the entire zoning ordinance. Today, new zoning ordinances have 10 or more conditional uses per zone—and that number is continually increasing.

This trend reflects the desire of communities to gain more control over more uses they view as having problems. These problems are of compatibility with nearby uses—problems that last and last—years after the project is built. As the public becomes aware of zoning issues, it pressures local governments to scrutinize each use more thoroughly to avoid future adverse consequences of development.

But even with the attention given to conditional uses, most zoning ordinances don't have good and proper planning standards to guide imposition of conditions upon problem uses.

We take two issues to discuss this topic. This issue of The Zoning Report gives you our ideas and suggestions for revising your standards for

conditional uses. Half of our next issue, March 21st, quotes sample text illustrating the principles and ideas we discuss in this issue. (The other half of our March issue, by the way, is our annual no-nonsense review of practical books on zoning, subdivisions and planning to add to your staff library.)

Much of what we say about conditional uses in this issue involves legal judgements by you and your legal counsel specifically for your community. We give our viewpoints as general guides for planning advice and not as legal opinion.

Getting it right — terminology for conditional uses

Distinguish between standards and conditions for conditional uses. Standards are criteria that your deciding authority uses to draft and impose conditions upon a conditional use (or special use). Conditions are the requirements that applicants for conditional uses must follow in designing, building and operating their development project.

The deciding authority is an individual (zoning administrator or hearing examiner) or, more commonly, a citizen board (BZA, CPC or local legislative elected board) designated by your

zoning ordinance to approve or deny conditional use applications. This authority imposes whatever zoning conditions it believes necessary upon a conditional use. The applicant must accept the conditions or appeal them.

The deciding authority hopefully uses the conditional use standards you've written into the conditional use section of your zoning ordinance as guides for drafting the conditions to be imposed on conditional uses. These standards presumably remove arbitrariness in the authority's choice of conditions. They serve as the planning basis for establishing the reasonableness for conditions imposed on each approved conditional use application.

In the end, the courts decide appeals of controversial conditions and their supporting standards. They ultimately determine what conditions are reasonable and what are arbitrary. But whatever standards you write into your zoning ordinance—and how your deciding authority uses them—counts heavily in determining whether or not debatable conditions are reasonable—from a planning viewpoint.

Conditional uses are the same as special uses. Zoning ordinances use these terms interchangeably. Newer ordinances tend to call them conditional uses.

Exceptional use is an earlier use of the term for conditional use. It derived originally from the first zoning ordinance written in the US, in 1916 for New York City, which other communities copied. In that ordinance and most local ordinances thereafter, exceptional uses were decided by the BZA with appeal to the courts.

But the trend in the past 20-30 years has been to shift them to the CPC and call them special uses or conditional uses. Experience has shown that the issues and problems of conditional uses were too important to be decided outside the political and policy-making mainstream of local government. So they shifted from the BZA with appeal to the courts to the CPC with appeal to the elected local council.

A use permit is the same as a conditional use in newer ordinances. All uses are listed in a single list for each zone. All uses are allowed by right unless the use is worded to require a use permit. By-right uses need only the usual building permits to start construction. Use-permit uses need prior approval, with conditions attached, from some deciding authority before building permits can be issued. Some of the use-permit uses might need only a minor site plan review and approval, rather than a major review of the compatibility of the use with nearby uses. Minor conditions can be approved administratively with appeal to a citizen board. Major conditions require review and approval by citizen boards.

A variance differs from a conditional use in that a variance is an approval granted to a property owner/applicant to use his property within exact limits in a manner otherwise forbidden by the zoning ordinance. A conditional use is an approval granted to a property owner/applicant to use his property for a use that the ordinance allows provided the owner complies with specified conditions.

There are four types of conditional uses. One type consists of those uses essential to the functioning of a small area or neighborhood. Unless conditions are met, these uses are incompatible with the character of the neighborhood they serve. These uses include public utilities (such as electric substations) and public and non-profit institutions that serve a basic public purpose (schools, community swimming pools, churches and church-schools) in or near residential areas.

The second type are private commercial uses whose nature creates incompatibility with similar uses and with nearby residential uses. Most common are gas stations, carwashes, drive-in businesses, bars and taverns, live entertainment uses and auto repair uses.

The third type are "LULU's" (locally undesirable land uses) such as fuel and explosives manufacture or storage, hazardous and sanitary waste dumps, animal rendering plants, feedlots

in urban areas. These may also be essential uses that serve areas larger than neighborhoods—whole cities, urban areas and counties.

The fourth type of conditional uses are the few large land development projects in rural and smaller communities which have short simple zoning ordinances. These ordinances have little need for specialized zones and procedures for major uses that seldomly occur. Examples include: shopping centers, industrial and office parks, state prisons; and, in rural areas, commercial feedlots, large intensive poultry operations, and county and municipal airports.

Filing applications for conditional uses

Require a site plan with applications for conditional uses. The site plan shows how the applicant applies your conditional use standards to solve problems inherent for his conditional use.

Your zoning ordinance should list major categories of design elements that must be shown on the conditional use site plan—and how these elements must meet zoning and planning purposes and objectives.

Require these elements on conditional use site plans: the footprint (ground floor coverage on the site) of all buildings and structures; intended use of buildings (e.g., retail, offices, warehouses, major anchor tenant by name, TBA buildings, ATM locations, drive-up facilities and arrangement of stalls and lanes, gas pumps, carwash lanes, building entrances, outdoor merchandise display areas, number of dwellings in buildings, number of stories in buildings); all driveways, parking areas and number of parking spaces provided; landscape screens, walls, and open buffer space; and perhaps landscape planting plans for critical screens.

For a complete checklist for site plans, see our two issues of *The Zoning Report* for November 11th and November 25th, 1985: "How to Red Pencil Site Plans: A Checklist of What to Look For."

A narrative might also accompany the site plan to describe development actions and policies difficult to show on the site plan. These include: staging schedule for project construction; site calculations and tables; architectural design of the project of buildings as they relate to permit conditions, such as aesthetics, number of stories, soundproofing, lighting, fencing, walls, trash storage and loading areas and docks.

Consider a pre-application meeting, written into your zoning ordinance, optional to the applicant, for staff review of his draft site plan and narrative. The pre-ap meeting discusses: relevancy of information required on applicant's site plan; implied policies from commentary and actions by CPC and elected board from previous similar conditional use cases; discussion of problems of the neighborhood and complaints by neighbors; and assurance that applicant meets with neighbors to hash out and understand problems before your board hears his case.

Simplify the approval process if more than one deciding board reviews and hears portions of a conditional use application. Commonly, in some communities, the site plan is submitted separately from the conditional use application to two deciding authorities. The site plan (and narrative) goes to the CPC for review and recommendation to the BZA. Then the BZA receives, hears and decides the conditional use application, basing its decision as it needs on the prior recommendation of the CPC.

Fortunately, many communities are replacing these cumbersome provisions with review and decision by one authority, usually the CPC.

Relating conditional uses to by-right uses in zone districts

The character of each of your zone districts is set by its stated purpose and by the implied degree of compatibility among the uses allowed by right.

Uses compatible in one zone may be incompatible in other districts. For example, uses in a B-1 neighborhood business zone have a different range of compatibility from those in a B-3 intensive highway commercial strip zone. Gas stations and carwashes are probably conditional uses in the B-1 zone and are incompatible with other B-1 uses unless development conditions are met. But in the B-3 highway district, these B-1 conditional uses would be allowed by-right—since a more intensive range of compatibility governs.

There must be enough by-right uses in each zone (in non-residential zones) to clearly set a reasonable range of compatibility of uses within each zone. Each zone district usually has a number of by-right uses and a smaller number of conditional uses.

Zone districts with no by-right uses and all (almost) uses conditional shift approval of all permits from a zoning administrator to a board of review. There are no other by-right uses by which compatibility of conditional uses can be measured. There is no implied range of similar compatibility among uses in the zone district, since there are no by-right uses.

But performance standards or site plan design requirements written into the zoning ordinance can shift decision-making to the administrative staff to approve or deny the request for a use permit. These performance measures establish compatibility of zones uses with one another in a zone, and must accord with the zone's written purposes and functions. Conditions and standards for use by approving boards are not sufficient as performance measures.

Who hears and decides conditional use applications

One of five authorities: CPC, BZA, the elected legislative board, a hearing examiner, or the zoning/planning administrator. Most common is the CPC or elected board upon receipt of the recommendation of the CPC. In older zoning

ordinances, or where state zoning enabling statutes require, the BZA hears and decides them.

Some newer ordinances replace the CPC/BZA with a hearing examiner—especially in larger communities or in smaller communities with lots of development activity. This reduces the length of board agendas and increases the board's available time to review more important cases.

The trend is away from the BZA and toward either of two deciding authorities—a hearing examiner or zoning administrator to decide minor conditional uses; and the CPC for major uses. Minor approvals are appealed to the CPC who takes final action. Further appeal by applicant or neighbors is to the courts, or to the legislative body on a 2/3rds or 3/4ths vote of the members of that body to override the CPC decision.

Multiple applications are commonly filed by applicants to obtain approval for a conditional use. Applications for a conditional use permit are often accompanied by a request for rezoning of the property. Denial of the rezoning kills the conditional use application.

Or the application for a conditional use permit to the deciding authority is often accompanied by applications for zoning variances to the BZA.

Or three or more applications are filed: for a rezoning to the CPC and elected board, for a conditional use to whoever decides them, and for variances to the BZA, based on hardship to develop rezoned property with the conditional use. Or even additional applications could be filed—as changes allowable for review under flood hazard and airport approach zones.

Administrative timing for multiple applications can get complicated. Usually, whichever application is first denied (variance, rezoning, or conditional use), the other applications are withdrawn from the agenda of the other deciding boards.

If one of the applications is approved but with major changes that change the basic premise of applicant's other applications, then

the other applications (for variances, the site plan, air approach height exceptions, flood hazard encroachments) need to be amended and perhaps refiled as new zoning applications.

Try to have as many multiple parts of applications heard and decided simultaneously with the conditional use. This is especially required for a joint rezoning and the conditional use application. If the rezoning is approved and the conditional use denied, the property can be used for any by-right use in the new zone. This may not be desirable for residential-like conditional uses (funeral homes, small landscaped offices) in commercial zones next to residential subdivisions, when any other by-right commercial use could go on the site. Certainly simultaneous approval of conditional use (and its site plan) with rezoning allows the land to be used for any by-right use in any event. But the approved site plan might effectively restrict use of the site to the conditional use and few other uses.

How to draft conditional use standards

Don't make your standards too general nor too detailed. They must provide a middle ground of flexibility to give your deciding authority sufficient discretion to tailor use conditions to the unique problems of each conditional use case application.

If your standards are too general, they are vague and not useful as guides. Vague standards are almost the same as no standards at all. They must have some specificity. They should not just refer to the basic purposes of your zoning ordinance—as found in the boilerplate in the first few pages of your ordinance. Nor should they only require that use conditions meet the general health, safety and welfare of the community. Such general standards are sufficient for your by-right uses. Since conditional uses require further restriction from by-right uses, they must have a further detailing of standards for planning purposes.

But if your conditional use standards are too detailed, they can remove most or all useful

discretion of the deciding authority to impose conditions that are special and unique in each conditional use case. Detailed standards effectively transform conditional uses to by-right uses with qualifications.

Distinguish between a standard and a qualification. A conditional use standard is a subjective guide used by a deciding authority to impose conditions on a conditional use. A qualification (or requirement) is a fixed numerical quantity or measure written into the zoning ordinance that all applicants must meet without exception.

The conditional use deciding authority cannot waive a qualification. Only the BZA can do that as a variance with a showing of hardship by applicant as typically required of variances.

But qualifications can be specially imposed on conditional uses. These are written into the zoning ordinance to apply to specific land uses. For example, if all lots in the R-1 single-family district require any principal use (by-right or conditional) to locate on a minimum lot size of 20,000 sq ft, churches and parochial schools could be required to have a minimum lot size of two acres.

Usually the few problem uses in a zone district are listed as conditional uses. And as conditional uses, the nature of these few uses may require special qualifications different from the larger number of non-problem, or by-right uses, no matter what additional conditions a deciding authority may impose on the conditional uses.

Determine which combination of standards the deciding authority can (or must) use to derive conditions imposed on a conditional use. You have two choices: either all standards must apply to all conditions for a use; or any one or more of them can apply—so long as at least one conditional use standard is found to apply in a case.

The latter choice gives greater flexibility to the deciding authority to find the proper standards appropriate to conditions to be imposed

in each case. But check carefully with your state's enabling legislation or case law; you might not have that choice—where, most likely, you must apply all standards.

Conditional use standards for a specific use can override any general standard for all conditional uses. There must be a planning rationale between the specific standard and the overridden general standard that allows the general standards to be pre-empted.

For example, screening and safety are the key standards for imposing conditions on electric substations and natural gas pumping stations rather than location.

Avoid having standards interpreted by deciding authorities that practically confiscate an approved conditional use. The deciding board might approve a conditional use but impose a condition that is so unreasonably difficult as to preclude development of the use. The deciding board can impose any zoning-related condition it wishes, but the condition must be reasonable in term of the planning rationale of your conditional use standard.

The deciding authority, for example, could not approve a single-family group house in a 1/2 acre R-1 zone by requiring it to have a ten-acre site when the house will be occupied by only a family-sized group of residents. Community-based group homes conventionally need only meet minimum lot size for dwellings allowable in the zone district. The excessive size of site practically precludes the use, since most group homes occupy existing houses as infill uses.

Conditional use standards are minimally applied. Imposition of conditions by the deciding authority based on conditional use standards are applied to the least degree to accomplish zoning and planning purposes. Standards cannot be applied to regulate the operation of a business unless its zoning purpose is clear, direct and obvious. For example, the night-time hours of a business in a small neighborhood zone near single-family subdivisions can be limited. But

limitations on its day-time hours or days of the week it must be closed are not appropriate conditions for a use permit.

Moreover, standards cannot be applied to restrict cultural, ethnic and religious groups under the guise of zoning—especially for schools, churches, seminaries, and businesses. Conditional zoning standards also must be clear, direct and evident or these groups may complain of civil rights violations through zoning actions.

The planning rationale of a whether a standard is sufficient and minimally applied can be determined from what conditions were successful in solving problems of compatibility under similar circumstances in earlier zoning cases, and the authoritative opinion and judgements of recognized technical experts.

Many communities route conditional use applications and site plans to other operating departments and agencies for review and professional opinion prior to the hearing by the deciding authority. The planning rationale of, for example, excessive traffic, environmental degradation, overloading of public water and sewer lines, and storm drainage problems can be judged by expert technical opinion as to their sufficiency in meeting conditional use standards.

Content of conditional use standards

Require conformance to other written zoning purposes and to master plans. Conditions imposed on a conditional use must require that that use meet: the purposes set forth in your zoning ordinance as a whole; written zoning purposes for the zone district; purposes set forth in other development codes; and the recommendations and policies of the community comprehensive plan and other adopted plans that cover the geographic site of the conditional use.

Place a time limit for start of construction of the conditional use or its stages. Most conditional uses, when granted, confer an implied

monopoly to serve the immediate area by the use. This monopoly is valuable to the applicant to prevent other competition in the trade area of the conditional use until applicant is ready to commit to construction. Speculation by the developer is reduced since the standard puts the project under a construction deadline.

Your standard would require that substantial construction be started within a fixed time period. This time is either set forth as a regulation (usually 12 to 24 months), or is a standard the deciding authority can use to fix the maximum time on a case basis per application. The time period starts the day after the time period for zoning appeals expires or after the effective date of the approving ordinance or CPC approval of the conditional use, whichever is greater.

Provide site design standards as guidelines for conditional uses. Two errors most often made are: to set forth too many site design standards in excessive detail; or to impose fixed qualifications on site design instead of flexible standards to be interpreted for each application by the deciding authority and the applicant. Either error imposes too much specificity and overly restricts the flexibility of your deciding authority to work out appropriate design-related conditions for each zoning case.

Consider listing these design conditional use standards in your zoning ordinance:

- no substantial additional traffic beyond that which would occur if any by-right use were to locate on the site in the zone district. The traffic expected to be generated by the conditional use is probably much greater than what might be generated by any other by-right use allowable in the zone—but the problem of substantial additional traffic must be resolved. The mistake is often made of comparing additional traffic generated by subject use with no traffic at all generated by the vacant site.

- aesthetics and character of the project, to be in character with abutting and adjacent properties. This issue can be difficult since architectural design of the project must be described in applicant's narrative. Artist's ren-

derings are accepted with skepticism and site plans do not show architectural appearance. This standard is usually written as requiring the conditional use not be unsightly, obnoxious nor offensive in appearance to abutting or nearby properties.

- screens, buffer space, walls on the periphery of the project to be compatible to abutting and nearby property.

- vehicular and pedestrian circulation: traffic movement and parking areas; sidewalks, driveways, internal streets and drives, traffic signals and turning lanes on abutting streets and arterials.

- use of the site next to property lines, to minimize incompatibility with abutting properties. This might require applicant to shift on-site uses to different locations on the site to place less intensive and passive uses closer to abutting properties with less intensive uses.

- excessive dust, noise, odor, glare, vibration or radiation that your deciding board believes will be created by the proposed conditional use beyond industrial performance measures and beyond that expected from any other typical by-right use in the zone. The applicant invariably insists that his use will meet all zoning performance measures. But the board must rely on its own caveat emptor through its own expert counsel and judgement as to whether a performance problem will be created.

- safety of the proposed use, which includes dangerous and obnoxious industrial processes, gas station fuel tanks, electrical substations and natural gas pumping stations in residential areas. The deciding board must assure that these safety problems are resolved.

- impact on the capacity of public facilities, so that the proposed conditional use does not take an excessive share of the available capacity of the water and sewerage system, storm drainage channels, and schools and recreational facilities. The project may be required to scale back its proposals, provide the additional public facilities or contribute to the cost of meeting the excess overload.

- size of site, and capacity and bulk of the use, to be in character with surrounding uses

and the neighborhood. Be careful that the use is not the issue but its size, capacity and intensity of site coverage. For example, a conditional use for a liquor license establishment in a B-1 zone as a neighborhood bar has different implications from a large restaurant-bar seating 500 people per performance per night.

Require minimal negative environmental and economic impact. Impact standards should consider a reasonable and certain probability of negative impacts rather than the potential possibility that they might occur.

A probability that an impact will occur is a certainty verified by past statistical observations in similar situations. A possibility that a negative impact will occur is conjecture—difficult to verify by statistical observation, or with a probability so small and remote, perhaps hypothetical with no actual known occurrence anywhere. Therefore your deciding authority would impose conditions to mitigate impacts based on the known and significant probability the damage will occur in the future rather than the possibility they might occur.

Make sure that flood hazard and airport approach zoning requirements are covered by review of conditional uses. Although your zone districts for flood hazards and airport approaches regulate all uses without exception, you might add this standard to your list of conditional use standards anyway. It assures that these concerns are considered, especially if a conditional use application is complex. The standard might also include any seismic or hillside zoning requirements that your development codes impose on all uses.

In the next issue (March 21st), we provide quoted sample text for conditional standards. The quotes are divided into five parts: (1), purposes of conditional uses and standards; (2), general standards for conditional uses; (3) site design related standards applicable to all conditional uses; (4), administratively based requirements and standards; and (5), classification of conditional uses.

CAN YOU HELP HONOLULU?

Conditional use of churches and schools

By coincidence, while preparing the topic of conditional uses in this issue of The Zoning Report, we received the following letter dated Feb 13, 1986 from Scott Ezer, Senior Planner with the Honolulu HI Dept of Land Utilization.

Honolulu is revising its zoning ordinance and is involved in hearings on it before the city council. Mr. Ezer's letter states: "The issue which has thus far garnered the overwhelming majority of written testimony centers around our proposal to regulate churches and private schools as a conditional use, with a public hearing, in residential and apartment zoning districts. . . The bulk of testimony received thus far centers around the constitutionality of (this) provision, a point which we feel should not be an issue, as our zoning powers clearly allow us to regulate churches, as long as we do not prohibit them outright. . . . We have a list of about 27 jurisdictions across the country which regulate churches, but are looking to strengthen our case by adding as many other cities/counties to our list as we can find."

Our conversation with Mr. Ezer indicates that he could use your help. If you have staff studies, memos and staff legal opinions on this topic, send Xeroxes of your materials to: Scott Ezer, Senior Planner, Dept of Land Utilization, City and County of Hawaii, 650 South King Street, Honolulu HI 96813; telephone: (808) 527-5387 (4-hour time difference from CST).

* * * * *

We make every effort to present accurate information and sound opinion in this report. However, we do not guarantee results, accuracy, or assume liability for errors, omissions, or for information you may act upon. This publication does not purport to be engaged in the practice of law or give legal advice, but is the opinion of the editor and publisher solely as a professional urban planner.

HOW TO WRITE GENERAL ZONING STANDARDS

FOR CONDITIONAL AND SPECIAL USES

(Part Two of two parts)

This is the second part of a two-part article on this topic. Part One was all of last month's issue of *The Zoning Report* (March 21, 1986). In that issue, we provided you with suggestions, rules, caveats and how-to ideas on the topic. In this issue, we provide you with sample quoted zoning text that illustrate the concepts we discussed in Part One.

Quoted sample text

We divide sample text quotes into four parts: (1), purposes of conditional uses and standards; (2), general standards for conditional uses; (3), site design related standards applicable to all conditional uses; and (4), classification of conditional uses.

Purposes of conditional uses and standards

"Special use permits are required for specified uses which must satisfy standards in addition to those generally applicable in a zoning district to eliminate or minimize the potentially harmful characteristics or impact of such special uses on the character of the zoning district in which they will be located."
(Memphis-Shelby Co, TN)

"PURPOSE. The development and execution of this (zoning ordinance) is based upon the division of the community into districts, within which districts the use of land and buildings, and the bulk and location of buildings and

structures in relation to the land are substantially uniform. It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land and the public need for the particular use in the particular location. Such special uses fall into two categories:

(1) Uses publicly operated or traditionally affected with a public interest.

(2) Uses entirely private in character, but of such a nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities." (Lake Forest IL)

"PURPOSE. This code is based on the division of the municipality into zones within each of which the use of land and structures, and the bulk and location of structures in relation to land, are substantially uniform. The Board of Trustees finds, however, that certain designated "special uses," because of unusual size, traffic, and other safety hazards, infrequent occurrence, or other characteristics, have unusual impact on neighboring property, on public facilities, or on the overall development of the community. The Board of Trustees finds that such uses, though they may be desirable or necessary for the welfare of the community and are not inherently incompatible with the uses permitted in certain zones, may be incompatible if permitted at certain locations within such zones or if permitted without conditions or restrictions. Accordingly, to carry out the purposes of this (zoning) code, the Board of

Trustees finds it necessary to require that such special uses be reviewed by the Board of Appeals in each case, and no building permit or certificate of zoning compliance for any such use be granted by the Administrative Official unless the Board of Appeals shall have granted a special use permit." (Matteson IL)

General standards for conditional uses

"The Planning and Zoning Commission in considering and determining its recommendations to the City Commission on any request for a Specific Use Permit may require from the applicant, plans, information, operating data and expert evaluation concerning the location and function and characteristics of any building or use proposed. The City Commission may, in the interest of the public welfare and to assure compliance with this (zoning) Ordinance, establish conditions of operation, location, occupancy arrangement and construction of any use for which a permit is authorized. In authorizing the location of any of the uses listed as Specific Use Permits, the City Commission may impose such development standards and safeguards as the conditions and locations indicate important to the welfare and protection of adjacent property from excessive noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glare, offensive view or other undesirable or hazardous conditions."
(Corsicana TX)

"SPECIAL FINDINGS REQUIRED FOR SPECIAL USE PERMIT. The Board of Appeals shall not grant any special use permit unless it finds that all of the following conditions exist:

- (1) The proposed special use is designated by this code as a special use in the zoning district in which the property in question is located.
- (2) The proposed special use will comply with all applicable regulations in the zoning district in which the property in question is located.
- (3) The proposed use will comply with all special regulations establish by this code for such special use.

(4) The proposed use is in harmony with the purpose and intent of this code and of any applicable portion of the Official Plan of the municipality; will not substantially increase congestion in the public streets; will not place an undue burden on any other public utilities; or will not increase the danger of fire or endanger the public health or safety.

(5) The granting of the special use permit will not substantially lessen the suitability of any nearby property for use and development in a manner permitted by right in the zoning district within which such nearby property is located, and will not substantially diminish or impair property values in the vicinity of the property in question." (Matteson IL)

"STANDARDS FOR SPECIAL USES. Certain uses, while normally not suitable in a zoning district due to nuisance characteristics or incompatibility with permitted uses, are suitable under special circumstances. A use may be permitted as a special use in a zoning district if the following findings are made:

"(1) The special use is in conformity with the City's Future Land Use Plan; with its Goals and Policies; and with the purpose, intent, and applicable standards of this (zoning ordinance);

"(2) The establishment or maintenance of the special use shall not be detrimental to the public health, safety, or general welfare;

"(3) The special use shall be located, designed, maintained, and operated to be compatible with the existing or intended character of that zoning district;

"(4) The special use shall not depreciate property values;

"(5) The special use shall not be hazardous, detrimental, or disturbing to present surrounding land uses due to noises, glare, smoke, dust, odor, fumes, water pollution, vibration, general unsightliness, electrical interference, or other nuisance;

"(6) The special use shall generate only minimal vehicular traffic on local streets and shall not create traffic congestion, unsafe access, or parking needs that will cause inconvenience to the adjoining properties;

"(7) The special use shall be served adequately by essential public services such as streets, police, fire protection, utilities, schools, and parks;

"(8) The special use shall not create excessive additional requirements at public cost for public facilities and services; and shall not be detrimental to the economic welfare of the City;

"(9) The special use shall preserve and incorporate the site's important natural and scenic features into the development design;

"(10) The special use shall cause minimal adverse environmental effects; and

"(11) The City Council may waive one or more of the above requirements upon receipt of an application for a special use permit for a public building or utility structure, provided the Council shall first make a determination that the balancing of public interest between political subdivisions of the state would be best served by such waiver." (Coon Rapids MN)

Site design related standards
applicable to all conditional uses

"STANDARDS OF GENERAL APPLICABILITY. An applicant for a special permit shall present evidence at the public hearing on such special permit, which evidence must establish:

"1. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety, and general welfare.

"2. That the proposed building or use will be constructed, arranged, and operated so as to be compatible with the immediate vicinity and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations.

"3. That the proposed building or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water, and sewers; or that the

persons or agencies responsible for the establishment of the proposed use will provide adequately for such services.

"4. That the proposed building or use will not result in the destruction, loss, or damage of any feature determined by the legislative body to be of significant natural, scenic, or historic importance.

"5. That the proposed building or use complies with all additional standards imposed on it by the particular provision of this Section authorizing such use." (Memphis-Shelby Co TN)

"STANDARDS FOR APPROVAL OF APPLICATION. In giving approval to any (conditional) use permit application, the planning commission shall find as follows:

"A. That the site for the intended use is adequate in size and shape to accommodate the use, and for all the yards, setbacks, walls or fences, landscaping and other features required by this (zoning ordinance) to adjust the use with those on abutting land and in the neighborhood;

"B. That the site for the proposed use relates to streets and highways properly designed, both as to width and type of pavement to carry the type and quantity of traffic generated by the subject use;

"C. That in approving the subject use at the specific location, there will be no adverse effect on abutting property or the permitted use thereof;

"D. That in requiring any of the certain safeguards listed in this subsection, the commission deems such requirements to be the minimum necessary to protect the health, safety and general welfare:

"1. Special setbacks and buffers.

"2. Fences and/or walls.

"3. Lighting.

"4. Paving or parking areas.

"5. Regulations of time for certain activities.

"6. Regulation of points of vehicular ingress and egress.

"7. Regulations of noise, vibration, odors, etc.

"8. Regulation of signs.

"9. Landscaping and maintenance thereof.

- "10. Street dedications and improvements.
- "11. Service roads and/or alleys when practical.
- "12. Any such other conditions as will make possible development of the city, in an orderly and efficient manner and in conformity with the intent of purposes." (Chino CA)

". . . The Board shall further find that satisfactory provision has been made for the following where applicable:

- "a. Vehicle Circulation. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- "b. Parking and Loading. Off-street parking and loading areas.
- "c. Effect on Adjacent Property. The economic, noise, glare or odor effects of proposed use on adjacent property.
- "d. Service Entrances and Areas. Refuse and service areas with particular reference to ingress and egress of service vehicles.
- "e. Utilities. Utilities, with reference to location and availability.
- "f. Screening. Screening and fencing where necessary to protect adjacent property.
- "g. Signs and Lighting. Exterior lighting and signs with reference to glare, traffic safety, economic effect and compatibility with other property in the area.
- "h. Open Spaces. Required yards and other open spaces and preservation of existing trees and other attractive natural features of the land.
- "i. Compatibility. General compatibility with adjacent properties and other property in the area." (Durham NC)

Classification of conditional uses

". . . The classes of uses which might fall naturally into this category of special permitted uses are:

"(a) Those which are of an essentially desirable character but which, since they attract people in considerable numbers, cannot be located in every place without consideration of conditions and properties neighboring upon the specific site considered, nor without adequate and sufficient safeguards to ameliorate their impact. In this category are churches, public, private and parochial schools, hospitals, philanthropic institutions, and certain types of clubs.

"(b) Those which are desirable for inclusion within the community for the well-being or convenience of its citizens or a substantial segment thereof, but which similarly require special consideration of location and site plan because of an inherent tendency to create traffic congestion, noise, density of people's assembly, or constitute a necessary but inconsistent use within a particular district. In this category are such uses as open area recreational uses, drive-in theaters, community swimming pools, gasoline service stations and similar uses." (Westland MI)

* * * * *

IN THE NEXT TWO ISSUES

In the May 23 issue we discuss sidewalks in subdivisions and zoning site plans. Requiring sidewalks on one or both sides of streets in subdivisions and who pays for them are the main problems. We give you our ideas, suggestions and sample text quotes for this topic.

The June issue, and perhaps the July issue, we discuss child day-care in residential zones.

* * * * *

We make every effort to present accurate information and sound opinion in this report. However, we do not guarantee results, accuracy, or assume liability for errors, omissions, or for information you may act upon. This publication does not purport to be engaged in the practice of law or give legal advice, but is the opinion of the editor and publisher solely as a professional urban planner.

Appeal from Johnson district court; PHILLIP L. WOODWORTH, judge. Opinion filed February 18, 1984. Affirmed.

David K. Martin, of Payne & Jones, Chartered, of Olathe, argued the cause and was on the brief for the appellant.

James F. Davis, of Brown, Korolchik & Fingersh, of Overland Park, argued the cause and was on the brief for the appellees.

The opinion of the court was delivered by

HEMD, J.: This is an appeal from a trial court decision holding the City of Mission acted unreasonably, arbitrarily and capriciously in a zoning decision.

In September, 1981, Taco Bell entered into a contract to purchase a vacant lot on the northeast corner of Johnson Drive and Walmer in Mission, Kansas, from Arthur Treacher's Fish & Chips, Inc., for \$150,000, subject to rezoning for a drive-thru fast-food restaurant.

The Taco Bell site has been vacant for many years. Prior to Taco Bell's application the site was zoned special class for retail development as an automobile service station. Taco Bell requested special class zoning to construct its drive-thru window restaurant pursuant to Chapter 18.34 of the Mission Zoning Regulations.

The Mission planning commission and city council have consistently rejected applications for retail use of the vacant site, including a request for a Kentucky Fried Chicken restaurant, a Wylie's Fast-Food restaurant and an automatic car wash.

Johnson Drive, upon which the site fronts, is a four-lane highway through the City of Mission. It is capable of handling up to 23,000 vehicles a day. The City's most recent traffic count is approximately only 20,800 vehicles a day. Johnson Drive cannot be expanded to increase its capacity for additional traffic without great financial cost. Toward the west end of Mission, three residential streets intersect Johnson Drive from the north. These are Riggs, Walmer, and Russell. These streets provide access to a stable residential area to the north of Johnson Drive.

To the south of Johnson Drive the area has developed as retail-commercial. There is another east-west thoroughfare, Martway Street, which handles traffic throughout the retail-commercial area, with Martway Street to the south of Johnson Drive.

The Taco Bell site plan satisfied all of the City's requirements pertaining to parking, signage and elevations. Taco Bell's proposed facility would have a seating capacity of forty persons. Its hours of operation were until midnight during the week and later on weekends. The environmental or aesthetic impact of the proposed Taco Bell operation is not of any different kind or degree than the developments already present along the north side of Johnson Drive except Taco Bell would contain a drive-thru facility. The adjoining businesses of Winchell's Donuts and Arthur Treacher's are separated from the residential area by only a chainlink and wooden fence respectively.

The Taco Bell application was heard by the City Planning Commission on January 18, 1982. The Planning Commission unanimously recommended to the City Council that the application for the rezoning be denied. On March 10, 1982, after further review by the planning commission, the City Council also unanimously denied Taco Bell's application for rezoning. The City Council denied Taco Bell's application based on the Planning Commission's expressed intentions to rezone a portion of the north side of Johnson Drive for office use. The only information presented by Taco Bell to the Planning Commission or the City Council in support of its rezoning application was the oral testimony of Michael Staenberg, the realtor for the Taco Bell/Arthur Treacher's property sale. On April 6, 1982, after the City denied its application, Taco Bell filed suit alleging the City was arbitrary, capricious and unreasonable in denying its application.

Subsequently, on June 23, 1982, the City Council voted to "down zone" a portion of the north side of Johnson Drive to office use. This area included the Taco Bell site as well as Arthur Treacher's, a Winchell's donut shop and a Sizzler restaurant. Such zoning could not be implemented immediately because of the existence of the three restaurants presently in operation. Thus, this change would affect only the selling price of the property, since it could be sold only for office use rather than use as another restaurant.

Appearing before the Planning Commission and City Council on the blanket down-zoning were Michael Staenberg, the realtor for Taco Bell, and James Davis, Taco Bell's attorney.

On July 19, 1982, Arthur Treacher's also filed an action in

Taco Bell v. City of Mission

No. 55,240

TACO BELL, Appellee, v. CITY OF MISSION, KANSAS, Appellant.
ARTHUR TREACHER'S FISH AND CHIPS, INC., Appellee, v. CITY OF
MISSION, KANSAS, Appellant.

(678 P.2d 133)

SYLLABUS BY THE COURT

1. APPEAL AND ERROR—*Issue Raised for First Time on Appeal—Exception to General Rule.* Generally, an issue not raised before the trial court may not be raised for the first time on appeal, unless the newly asserted argument involves only a legal issue arising on proven or admitted facts. *State v. Puckett*, 230 Kan. 596, 598, 640 P.2d 1198 (1982).
2. ZONING—*Standing of Party to Seek Rezoning.* A party deemed to be neither a landowner nor a real party in interest has no standing to seek rezoning pursuant to K.S.A. 12-708.
3. SAME—*Standing of Party to Seek Rezoning—Standing of Contract-Purchaser of Real Estate to Challenge Zoning.* A party who is a contract-purchaser of real estate has standing to challenge the reasonableness of a zoning change affecting the purchased property pursuant to K.S.A. 12-712.
4. SAME—*Judicial Review.* The rules concerning the scope of judicial review of zoning matters are stated.
5. SAME—*Judicial Review—Factors for Court to Consider.* In determining whether the zoning actions of a governing body are arbitrary and unreasonable, the reviewing court should analyze the action pursuant to the factors established in *Golden v. City of Overland Park*, 224 Kan. 591, 584 P.2d 130 (1978). The factors are stated and discussed.
6. SAME—*Rezoning for Commercial Development—Denial of Rezoning Based on Traffic Flow—Judicial Review of Denial.* A slight increase in traffic on an already busy thoroughfare is not a sufficient objection to prevent rezoning for commercial development. There is danger of abuse in allowing a governing body to rely on generalities concerning traffic to control zoning decisions.
7. SAME—*Public Health, Safety and Welfare Considerations.* When considering the public health, safety and welfare in zoning decisions it must be remembered the public is the community at large, not just the neighbors, although their wishes are also to be considered.
8. SAME—*Master Plan Developed by Planning Commission—Statutory Requirements—Consideration of Plan by Governing Body.* A comprehensive master plan pursuant to K.S.A. 12-704 must meet certain requirements of the statute in order to be a guide during the proceedings before the governing body. Although the plan is not binding on the zoning decisions of the government, it should be considered and is persuasive when reviewing the zoning action for arbitrariness.
9. SAME—*Judicial Review—Analysis Required by Reviewing Court.* In determining whether a governing body was arbitrary or capricious in rezoning property the reviewing court will look to see if a governing body has used the thorough, issue-oriented analysis required by this court in *Golden v. City of Overland Park*, 224 Kan. 591, 584 P.2d 130 (1978), in order to prevent arbitrary and capricious rezoning decisions.

Johnson County District Court alleging the City's blanket zoning as applied to Arthur Treacher's facility was arbitrary and capricious. In addition, Taco Bell filed an amended petition on July 15, 1982, alleging the blanket zoning, as applied to the vacant lot it wanted to purchase, was arbitrary, capricious and unreasonable. The Taco Bell lawsuit and the lawsuit of Arthur Treacher's were consolidated for trial.

Prior to trial, upon motion of Taco Bell, the trial court struck the City's defense that the court lacked jurisdiction over Taco Bell because Taco Bell was not the owner of the property which it desired to rezone as required by K.S.A. 12-708.

The Taco Bell site and the Arthur Treacher's site are situated within a retail commercial zone fronting along both the north and south sides of Johnson Drive. The strong retail commercial character of the sites is well defined by reference to nearby uses, such as two automobile dealerships (one north side, one south side), a Vicker's Service Station (south), Captain D's Fish & Chips (south), McDonald's (south), Arby's (south), Winchell's donut shop (north), Arthur Treacher's Fish & Chips (north) and Mission West Shopping Center (south). Leasing plans for the Mission West Shopping Center called for future development of nineteen retail stores to the south of the subject site. The various retail commercial users on the north of Johnson Drive all border directly on residential areas.

There has been no recent indication of small office building development along Johnson Drive in the Mission area and the local market for office space has been soft for well over a year, as is evidenced by the area's high vacancy rate and the substantial rent concessions being offered by landlords to attract tenants.

The residential neighborhoods to the north of the subject site have remained stable in recent years notwithstanding the extensive growth of retail development, which has included various fast-food restaurants with drive-thru facilities.

On December 8, 1982, the district court rendered its decision finding the City's actions in the Taco Bell and Arthur Treacher's matters were arbitrary, capricious and unreasonable. The City of Mission appeals.

We first consider appellant's initial argument that Taco Bell did not qualify as a landowner or as a party with such an interest in the property as to entitle it to challenge the zoning actions of the City.

The appellees argue this point was not raised at the trial level since the contract for sale between Taco Bell and Arthur Treacher's was entered without objection. The issue was raised, however, in the pretrial order where the trial court ruled Taco Bell had standing. Even though the issue was not renewed at trial it is properly before this court as an exception to the general rule. The general rule is that an issue not raised before the trial court may not be raised for the first time on appeal. *Lantz v. City of Lawrence*, 232 Kan. 492, 500, 657 P.2d 539 (1983). There is an exception to the rule if a newly asserted argument involves only a legal issue arising on proven or admitted facts. See *State v. Puckett*, 230 Kan. 596, 598, 640 P.2d 1198 (1982).

As previously stated, standing is a legal question which may be resolved here by a determination of proven facts. Thus, this court will consider the standing issue even though allegedly raised for the first time on appeal. Taco Bell submitted the application for the requested zoning change, although Arthur Treacher's is the legal owner of the property. The reason for the action on the part of Taco Bell, as opposed to Arthur Treacher's, is the purchase agreement between the two parties. Arthur Treacher's agreed to sell the land to Taco Bell contingent upon Taco Bell successfully obtaining rezoning to allow a drive-thru fast-food restaurant on the location. The purchase contract between the parties provided for Taco Bell to obtain rezoning as Arthur Treacher's agent.

Taco Bell's interest and authority to act for Arthur Treacher's was accepted throughout the proceedings with the City. There is no evidence Taco Bell acted without Arthur Treacher's complete consent.

The appellant argues, however, the law in Kansas allows only the landowner to seek rezoning. In support appellant notes the language of K.S.A. 12-708, which provides:

"A proposal for such amendment may be initiated by the governing body, the planning commission or upon application of the owner of property affected."

Appellant further cites *Concerned Citizens, United, Inc. v. Kansas Power & Light Co.*, 215 Kan. 218, 523 P.2d 755 (1974). That case involved a group of citizens who sought to delay the utility company's condemnation proceedings. The group argued the utility company could not condemn their property until it

had successfully secured all proper rezoning. The court held the utility company could not be required to rezone the property prior to condemnation since "it is apparent that one who is not the owner of property affected may not make application for a change in zoning." 215 Kan. at 236.

Concerned Citizens is not applicable here. In that case the utility company shared no interest with the landowners. There was no agreement or connection between the parties. In the case at bar, Taco Bell and Arthur Treacher's both want to accomplish the rezoning. Their interest is not only the same, but it is expressed in writing in their purchase agreement.

On the contrary, *Martin Marietta Aggregates v. Board of Leavenworth County Comm'rs*, 5 Kan. App. 2d 774, 625 P.2d 516, rev. denied 229 Kan. 670 (1981), is applicable. In *Martin Marietta* surrounding landowners were challenging the efforts of Martin Marietta to obtain a special use permit to allow mining. Martin Marietta did not own the land, but rather had an option to lease the land if they were successful in obtaining the special use permit. The surrounding landowners argued Martin Marietta was not the real party in interest, as required by the law of variances. The Court of Appeals pointed out that although a landowner and not a lessee must suffer the hardship necessary to prove the need for a variance, such was not the case with a special use permit. The court adopted the reasoning of *Burr v. Keene*, 105 N.H. 228, 230, 196 A.2d 63 (1963), which states:

"As pointed out by counsel for the defendants no useful purpose would have been served by requiring the owners' signatures on the petitions. The prospective purchasers were the real parties in interest and the only ones who could furnish the information which the board needed in order to make its decision."

This logic is more applicable here than in *Martin Marietta* since Taco Bell has an option to buy, not merely an option to lease, after the rezoning is accomplished. Additionally, as the *Burr* court reasoned, it is Taco Bell's field engineers, marketing representatives, traffic consultants and designers who must be in close contact with the planning commission and city council during the planning stage for this development, not Arthur Treacher's. Arthur Treacher's only interest is seeing the real estate contract consummated and the purchase price received. It would not be reasonable to require Arthur Treacher's, which is the landowner, to expend the time and expense of seeking rezoning which was purely for Taco Bell's benefit.

Additionally, the zoning ordinances of the City of Mission specifically allow a landowner "or his authorized agent" to submit an application for rezoning. See *Mission Zoning Ordinance No. 18.60.010*. This alone is persuasive in supporting the trial court's decision to allow Taco Bell to bring this suit.

Appellant also argues Taco Bell lacks standing to challenge the blanket zoning order made by the City on June 23, 1982. This action allowed only office use on certain sites on the north side of Johnson Drive, which includes the Taco Bell property and Arthur Treacher's restaurant.

K.S.A. 12-712 provides only parties having an interest in the property affected may challenge the reasonableness of a zoning change. The City argues appellee was not a party with an interest in the property due to a clause in the Taco Bell/Arthur Treacher's purchase contract. The clause stated Taco Bell had 180 days from September 8, 1981, to obtain rezoning. Since the blanket zoning action on June 23, 1982, occurred after the 180 days had lapsed, the City argued Taco Bell lacked sufficient standing. Appellee alleges the contract contains no automatic termination provision. Further, the undisputed evidence was that Arthur Treacher's and Taco Bell continued to reaffirm their collective interest in the vacant tract at all City meetings, including the June 23, 1982, council meeting. Taco Bell's regional real estate manager testified Taco Bell still was the contract-purchaser under the purchase agreement on date of trial. In June, 1982, appellee was a party having an interest in the property affected by the zoning change as required by K.S.A. 12-712.

Based upon the realities of the Arthur Treacher's/Taco Bell contract which provided for Taco Bell to obtain rezoning in cooperation with Arthur Treacher's, we hold Taco Bell had standing to bring the case at bar.

The appellant next argues the trial court erred in ruling the City was arbitrary and unreasonable in denying Taco Bell's request to change the allowed use of the vacant lot from an automobile service station to a fast-food restaurant with a drive-thru window facility.

The law in Kansas is well settled concerning the scope of judicial review of zoning matters. These rules are:

"(1) The local zoning authority, and not the court, has the right to prescribe, change or refuse to change, zoning.

"(2) The district court's power is limited to determining
 (a) the lawfulness of the action taken, and
 (b) the reasonableness of such action.

"(3) There is a presumption that the zoning authority acted reasonably.

"(4) The landowner has the burden of proving unreasonableness by a preponderance of the evidence.

"(5) A court may not substitute its judgment for that of the administrative body, and should not declare the action unreasonable unless clearly compelled to do so by the evidence.

"(6) Action is unreasonable when it is so arbitrary that it can be said it was taken without regard to the benefit or harm involved to the community at large, including all interested parties, and was so wide of the mark that its unreasonableness lies outside the realm of fair debate.

"(7) Whether action is reasonable or not is a question of law, to be determined upon the basis of the facts which were presented to the zoning authority.

"(8) An appellate court must make the same review of the zoning authority's action as did the district court." *Combined Investment Co. v. Board of Butler County Comm'rs*, 227 Kan. 17, 28, 605 P.2d 533 (1980).

In judging the actions of the City to be arbitrary and unreasonable in denying Taco Bell's application, the trial court utilized the appropriate scope of review and applied the test of reasonableness established by this court in *Golden v. City of Overland Park*, 224 Kan. 591, 584 P.2d 130 (1978). Prior to *Golden* the standard for determining "unreasonable" was so general and nondescript a court was helpless in applying any comprehensible standards to test the validity of zoning determinations. The results of applying such ambiguities as "beyond the realm of fair debate" and "reasonableness" often resulted in the City prevailing merely by presenting some evidence to support its action. Such is no longer the case. This court in *Golden* defined the factors which it suggested "would be well for a zoning body to bear in mind when hearing requests for change." 224 Kan. at 598. These factors are:

- "1. The character of the neighborhood;
- "2. the zoning and uses of properties nearby;
- "3. the suitability of the subject property for the uses to which it has been restricted;
- "4. the extent to which removal of the restrictions will detrimentally affect nearby property;
- "5. the length of time the subject property has remained vacant as zoned; and
- "6. the relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner."

To these the court added: "the recommendations of permanent or professional staff, and the conformance of the requested change to the adopted or recognized master plan being utilized by the city." *Golden*, 224 Kan. at 598.

Further, this court in *Golden* instructed that a City's rezoning determination on a particular tract rose or fell not on the use of generalized complaints against commercial development such as "noise," "litter," and "traffic," but rather on the defensibility of the City's stated reasons for its actions. The traditional tests of reasonableness were not abandoned but are enhanced by the eight factors which provide a reviewing court with a basis for testing the action of a governing body in a meaningful way.

Let us now review the denial of Taco Bell's application on the basis of the *Golden* criteria.

THE CHARACTER OF THE NEIGHBORHOOD.

The City argues the area north of Johnson Drive is mainly residential with some light commercial activity. The entire area, however, both north and south of Johnson Drive, is composed of retail business. Fast-food restaurants are quite predominant. On each side of the Taco Bell lot is a fast-food retailer, Winchell's Donuts to the west with Arthur Treacher's to the east. While there are no drive-thru restaurants on the north side of Johnson Drive, there are many to the south which are quite close to the Taco Bell lot.

The City also argues the increased traffic on Johnson Drive caused by the Taco Bell would require substantial improvements to the streets north of Johnson Drive as well as Johnson Drive itself. This assertion is without substantiation. Taco Bell presented a proposal to allow exits only onto Johnson Drive from its restaurant in order to keep traffic off the north residential streets. Further, there was no evidence that Johnson Drive in its present condition was not completely adequate to handle Taco Bell's customers.

The City alleges Winchell's and Arthur Treacher's, Taco Bell's neighbors, have lighter customer traffic and a small number of personnel. While Winchell's is slightly lower in customer traffic, the only competent evidence concerning Arthur Treacher's is that it has the same amount of traffic as Taco Bell is projected to have.

The City speculates, without support, that one lone drive-thru

fast-food restaurant will disrupt the peace and quiet of this entire area, as if there were no other commercial activity nearby. In actuality, the entire neighborhood is commercial/retail with the exception of the private homes to the north of the businesses which are situated on the north of Johnson Drive. The Taco Bell lot is surrounded on all sides, except to the north, by busy retail establishments. The trial court did not err in finding the character of the neighborhood was strong retail-commercial.

THE ZONING AND USES OF PROPERTY NEARBY.

Prior to this action the Taco Bell lot was zoned for a gasoline service station. In considering the effect of the restaurant proposed by Taco Bell on the nearby property, the trial court found "the planned fast-food store with a drive-thru capacity appears to be a less intensive use than a gasoline service station." Substantial evidence was introduced at trial in support of this finding. Further, the trial court held: "Whatever impact the commerce of Johnson Drive may have on the adjacent residential area, the addition of one further restaurant should not significantly alter that impact."

The testimony at trial established the residential property adjacent to the businesses on the north side of Johnson Drive, while affected by the retail activity there, would not be harmed by the addition of the Taco Bell as compared to all the other retail businesses.

THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES FOR WHICH IT HAS BEEN RESTRICTED.

The property, although zoned for use as a service station, was never developed as such. Testimony was offered at trial showing gas stations are not being built or purchased these days due to market conditions. The property, however, is now zoned C-O (office building). The City states this action was taken in order to provide better transitional zoning between the retail businesses and the residential area. While it is true office buildings provide transitional zoning, there was overwhelming evidence at trial that a demand for office buildings in Mission does not exist. The City admits this is currently true but speculates the future may have a need for such development.

This court in *Colden* faced a similar argument. In that case the landowner presented substantial evidence that at the time of trial there were many vacant office buildings in the Overland Park

area and the landowner's property was not attractive for office development. The City of Overland Park argued that in the past while the landowner had owned the tract in question there had been a great demand for office buildings. In determining this was irrelevant to the facts at trial, this court held: "The issue is whether zoning for office construction was appropriate at the time of the hearing A massive overbuild of office space . . . leads to the inevitable conclusion that the demand for additional office space did not exist" 224 Kan. at 600. Such is the case here. Experts from the fields of real estate sales, construction and real estate appraising all testified office buildings in Mission were vacant; tremendous rent concessions were being made by landlords in order to keep tenants; there had been no activity on some office building listings for over a year; no office buildings were being constructed on Johnson Drive; and finally, it would be extremely difficult to lease office space in a building located between two fast-food restaurants. The witnesses agreed any office building on the Taco Bell site would be a losing proposition.

The trial court's finding it is not feasible to develop the Taco Bell site as an office building is supported by substantial, competent evidence.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY.

The City contends the economic value of the residential area will be decreased by the placement of a fast food restaurant on the vacant lot. The evidence at trial, however, was that selling time could possibly be delayed but selling price would not be hurt. Other expert testimony was offered showing any decrease in value occurred years ago when Johnson Drive was developed commercially and one more restaurant could not realistically be linked to a decrease in property values.

The City also argued Taco Bell could not provide proper screening for lights or automobile odors, or provide for other aesthetic considerations. Expert testimony was admitted which demonstrated substantial planning for green areas to include trees, shrubbery, fences and landscaping, all of which would result in effective screening. It was pointed out that Arthur Treacher's and Winchell's have only fences, one wooden and one chain link, to separate their property from the residential

properties adjacent to them. Taco Bell's plan provided substantially more than a fence.

It is also argued by the City that permitting the construction of Taco Bell would make the area less safe for children. A sidewalk and signaled crosswalk presently exist on the north side of Johnson Drive. There is no evidence Taco Bell would interfere with these. Additionally, Hickory Grove Elementary School, to the south and east across Johnson Drive from the vacant lot, is no longer used as an elementary school. The number of children on Johnson Drive has thus substantially decreased.

The major detriment the City urges would result from the Taco Bell restaurant is increased traffic. For support of this the City cites *Moyer v. Board of County Commissioners*, 197 Kan. 23, 30, 415 P.2d 261 (1966). The *Moyer* case, however, is easily distinguishable. There the court found traffic was an important consideration when the landowner proposed to build a service station on property completely surrounded by a residential neighborhood. The court held the attracting of outside traffic into an area where it would not normally venture was a detriment to the zoning change. Here there is no evidence new traffic will be attracted to the area. Taco Bell expects to receive its customers from the 20,000 plus vehicles which already drive on Johnson Drive each day.

Taco Bell contends the City's traffic objections are further evidence of the unreasonableness of its action. As proof, Taco Bell points to the new expansion of Mission West Shopping Center, which when completed will include nineteen new retail stores. This expansion was allowed despite complaints from residential neighbors concerning traffic problems. Mission West is across Johnson Drive from the vacant lot. Taco Bell convincingly argues it is arbitrary behavior for the City to reject its zoning change based on the same complaint received and rejected against the shopping center.

Taco Bell additionally indicates if traffic is the deciding factor in this area, then any commercial development, no matter how small, in a retail district would be threatened. Considering this argument, the Missouri Supreme Court held:

"[A]ny added traffic congestion which would be caused by any ordinary commercial use of this tract would be wholly insignificant, when compared to the existing volume of traffic and congestion; . . . thus the tract should not be

penalized because of existing traffic conditions." *Huttig v. City of Richmond Heights*, 372 S.W.2d 833, 840 (Mo. 1963).

The trial court adopted the foregoing rationale in its Conclusion of Law No. 18:

"A city council should consider all matters affecting safety, health and public welfare in considering a particular planned zoning request. One of these matters frequently is the traffic flow in, through and around the proposed project. Where basic safety considerations have been met an application may not be rejected because the project will increase the traffic flow on the existing street network, particularly where the development is of small size in relation to the capacity of traffic on the adjoining streets. The simple fact that a proposed use would generate additional traffic is not relevant to the proper land use for that property."

Both the Missouri Supreme Court and the court below express the proper balance between zoning changes and traffic considerations. The lone Taco Bell restaurant in this case should not be disallowed merely because it might have an impact on traffic. We warned in *Golden* of the danger of a governing body relying on such general considerations as "traffic problems" and "traffic congestion" to control zoning decisions.

The City traffic engineer testified no new traffic signals would be needed after the Taco Bell was built because the traffic increase would be insignificant. The City's evidence that nearby property would be detrimentally affected by the Taco Bell restaurant is not persuasive.

THE LENGTH OF TIME THE SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED.

For thirteen years, from 1969 to 1982, the property was zoned to allow a gasoline service station and remained undeveloped. The office district zoning has only been in effect since June 23, 1982. The evidence nevertheless demonstrated the City has an oversupply of office space, as previously discussed, and the area is thus not adaptable to that use.

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY, AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PLAINTIFF'S PROPERTY AS COMPARED TO THE HARDSHIP

IMPOSED TO THE INDIVIDUAL LANDOWNER.

When analyzing the gain to the public it must be remembered who constitutes the "public." This court has previously held: "Zoning is not to be based upon a plebiscite of the neighbors,

and although their wishes are to be considered, the final ruling is to be governed by consideration of the benefit or harm involved to the community at large." *Waterstradt v. Board of Commissioners*, 203 Kan. 317, Syl. ¶ 3, 454 P.2d 445 (1969). Thus, while residents neighboring the proposed Taco Bell site have protested its development, the benefit to the community as a whole must be considered. The neighbors argue there would be traffic, noise, light and odor problems. These have already been addressed and the evidence shows they can be alleviated by screening. The benefit to the public in not developing seems to be minimal. The benefit to the public in developing is great in the way of jobs, taxes, and use of previously unproductive property.

The hardship to the owner of not allowing the zoning change is also great. As previously explained, development as an office would be highly unlikely. The lot would thus remain unused and unprofitable to the owner.

THE RECOMMENDATIONS OF PERMANENT
OR PROFESSIONAL STAFF.

The City of Mission does not employ any permanent professional land-use planners. The City argues nevertheless it relied upon a previous decision of the district court upholding the City's decision not to allow another fast-food drive-thru restaurant, Burger King, to locate on the north side of Johnson Drive. The district court decision was not appealed.

An unpublished decision of a district court has no binding effect on this action except for its persuasive value. See *In re Sawyer*, 234 Kan. 436, 672 P.2d 1093 (1983). In addition, the Burger King case is distinguishable on the facts. The Burger King restaurant called for an operation about three times the magnitude of the proposed Taco Bell. Also the Taco Bell site provides natural screening from the contour of the land. The Burger King land was on the same level as the adjoining properties, and Burger King proposed no additional screening, unlike Taco Bell. The reliance by the City on the previous district court case was misplaced and is not persuasive in the case at bar.

THE CONFORMANCE OF THE REQUESTED CHANGE
TO THE ADOPTED OR RECOGNIZED MASTER PLAN
BEING UTILIZED BY THE CITY.

The City argues it was guided in its decisions in the Taco Bell proceedings by its new master plan, designated at trial as de-

fendant's exhibit D. Exhibit D is a map of the City of Mission. It is color-coded to indicate multi-family, commercial, office district and parks and open spaces. Only a small portion of the city is so colored. It is not indicated what zoning designation the uncolored portions have. The exhibit appears very unprofessional.

Taco Bell argues this map does not qualify as a comprehensive plan pursuant to K.S.A. 12-704. This statute authorizes city planning commissions to make comprehensive master plans to help plan for future development in their cities. The statute gives guidelines for the preparation of such plans as follows:

"[T]he planning commission shall make or cause to be made comprehensive surveys and studies of past and present conditions and trends relating to land use, population and building intensity, public facilities, transportation and transportation facilities, economic conditions, natural resources, and may include any other element deemed necessary to the comprehensive plan. Such proposed plan, which may in addition to a written presentation, include maps, plats, charts and other descriptive matter, shall show the commission's recommendations for the development or redevelopment of said territory"

When examined in light of the statute, exhibit D falls far short of meeting the legislative requirements. Additionally, the planning commission chairman, Larry Jones, could not remember whether the proposed comprehensive plan had been completed before the filing of this lawsuit. This casts considerable doubt as to the use of this plan by the City as a guide during the proceedings before the planning commission and city council.

Taco Bell argues a 1968 study performed by Howard, Needles, Tammen, & Bergendoff is the recognized comprehensive plan for the City of Mission. This study is a two-hundred page document covering in detail the factors proposed in K.S.A. 12-704 with numerous maps, diagrams and charts to illustrate the written material.

To support its contention that this was the recognized comprehensive plan, one of Taco Bell's expert witnesses, Andrew Schlager, testified he had visited city hall, requested a copy of the City's master plan and was given a copy of the 1968 Howard-Needles study.

The Howard-Needles plan called for commercial, wholesale and retail development in a strip along the north side of Johnson Drive including the Taco Bell lot. The color-coded map pro-

posed by the City shows office district development in the small area on the north of Johnson Drive.

The City has no ordinance adopting either plan as its official comprehensive plan. This court, however, in *Golden* stated the court should look to either the "adopted or recognized" master plan. 224 Kan. at 598.

Finally, the City argues regardless of which plan is the official one this court has held a city is not bound by or obligated to follow the comprehensive plan. See *Coughlin v. City of Topeka*, 206 Kan. 552, 557, 480 P.2d 91 (1971). It is true the City is not "bound" by the plan, but this court held "they should not be overlooked when changes in zoning are under consideration." *Golden v. City of Overland Park*, 224 Kan. at 598.

In this case, the evidence supporting the granting of the zoning change was overwhelming. The evidence in opposition was minimal. The trial court properly applied the correct rules of law. After examining the entire record, we hold the trial judge did not err in finding the city council's action in denying rezoning unreasonable as a matter of law. See *Combined Investment Co. v. Board of Butler County Comm'rs*, 227 Kan. 17, 31, 605 P.2d 533 (1980).

The third issue presented is whether the City was arbitrary and capricious in enacting zoning which allowed only office use on the north side of Johnson Drive.

The City rezoned only four retail properties on the north side of Johnson Drive to office use. These were the Taco Bell lot, Arthur Treacher's, Winchell's and the Sizzler. Its action was taken while this case challenging the denial of the zoning change was pending. In support of the rezoning, the City argues historically up until 1969 the area along the north side of Johnson Drive was zoned only for office use and a return to this use was needed to provide adequate buffering for the residential area.

It was not explained by the City why the rest of the retail businesses abutting the residential area were not also rezoned. There was evidence of what appeared to be an anti-restaurant animus among the city planning commission. Several statements were made which indicated the commission wished to eliminate some of the restaurants on the west end of Johnson Drive. If this is true, it appears these four restaurants were arbitrarily singled out to be eliminated for no reason. No study was done to indicate why these particular establishments should be precluded, on the

feasibility of the new office-use zoning, or on the impact of the change to the community as a whole. The city planning commission members when asked to explain the basis for their decision stated they were long-term city residents and they knew what was best for their city. Further, there was evidence they relied heavily upon the opinions of nearby residential neighbors. While these are appropriate considerations they are only part of the picture. The effect of zoning on the public at large is the primary consideration. There was no consideration of the financial hardship to the landowners by the zoning change, no consideration of the public welfare, or consideration of the overall feasibility of such changes. The process was not the thoughtful, issue-oriented analysis required by this court in *Golden*. The City's action in changing the zoning from special use and retail commercial to office district use was arbitrary, capricious and unreasonable.

The judgment of the trial court is affirmed.

LOCKETT, J.: Concurring and dissenting. I agree with the majority that Taco Bell, the contract-purchaser of real estate, has standing to challenge the reasonableness of a zoning change affecting the purchased property pursuant to K.S.A. 12-712. It would serve no useful purpose to create the fiction that the present owner was requesting the zoning change to utilize the property. Taco Bell was the party who would use the land if a zoning change were approved. Taco Bell had the information as to the type of construction planned, use of the facility once constructed and past experience in operation of a taco restaurant. The present landowner's interest is selling the property to Taco Bell.

I agree with the majority as to the scope of judicial review in zoning matters. It is the local zoning authority's right to prescribe, change or refuse to change zoning. There is a presumption that the zoning authority acted reasonably. The court's power is limited to determine if the zoning authority acted lawfully and reasonably. The court cannot substitute its judgment for that of the zoning authority. I agree the scope of review is the test of reasonableness supplied by *Golden v. City of Overland Park*, 224 Kan. 591, 584 P.2d 130 (1978).

I do not agree that Taco Bell has proven the unreasonableness

of the zoning authority's denial of the requested change. The zoning authority's action was not unreasonable and/or arbitrary. Its action was not taken without regard to the benefit or harm involved to the community at large. The decision of the zoning authority was not so wide of the mark that its unreasonableness lay outside the realm of fair debate.

Most of the evidence presented during the administrative hearing on the zoning change request was in opposition to the change requested by Taco Bell. The neighborhood north of Johnson Drive adjacent to the area was single family residences. The neighborhood had maintained high-quality residential characteristics. Expert witnesses and neighboring property owners voiced serious concerns about the effect the proposed Taco Bell would have on property values. Expert witnesses testified that traffic along Johnson Drive is approaching the saturation point.

The city, through the years, has consistently denied requests for zoning changes on the north side of Johnson Drive to fast-food restaurants which included drive-thru window facilities. Reasons for the denials are contained in the record.

Other than being fast-food restaurants, the two adjoining restaurants are not really comparable in operation according to the evidence before the administrative board. Taco Bell's proposed facility would have a seating capacity twice the size of Arthur Treacher's or Winchell's Donuts. The peak hours of business were shown to be different between the three facilities. Taco Bell would have a greater volume than the other two restaurants during the late night hours. Taco Bell's night hours of operation would exceed those of the other two restaurants. Taco Bell's hours of operation would last until 12:00 midnight during the week and until 2:00 a.m. on the weekends. The parking lot and drive-thru area, situated adjacent to the residential area, would be properly lighted for the safety of customers during the night hours of operation, and the lighting in the parking area may be on all night to protect the property.

Other expert witnesses testified to the additional cost to the city to maintain the area, the availability of other sites on the south side of Johnson Drive, and the economic impact on the value of surrounding land.

Here, the district court and this court, after reciting the scope

of judicial review, have substituted their judgment for that of the administrative body. From the facts presented to the zoning authority, I cannot say that the zoning authority's action was so arbitrary that it was unreasonable under the guidelines outlined in *Combined Investment Co. v. Board of Butler County Comm'rs*, 227 Kan. 17, 28, 605 P.2d 533 (1980), and *Golden*, 224 Kan. 591. I respectfully dissent.

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For Planning and Zoning Professionals

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DEFINING "FARM" AND OTHER AG TERMS

FOR AGRICULTURAL AND URBAN FRINGE ZONES

Dramatic changes are occurring in agricultural zoning. The belief that farmland is vacant land residually awaiting urban development is being replaced by a view that viable agricultural areas need to be protected from intrusion by non-ag uses.

State laws are being enacted in all states to give teeth to these dramatic changes. These new laws are a trend that started 15-20 years ago in one or two pioneering states.

States are enacting whole sets of farm protection laws for taxation, land use regulation, farm pollution, environmental protection, rural/urban-fringe capital improvement regulation.

These new state laws may require you to review your zoning and subdivision partition/division laws. You may need to rewrite your agricultural ordinances to reflect these state-law changes—and new rules authorized for enforcement by state agencies.

As part of these changes, consider rewriting your definition of zoning terms. Your definitions and new ag zones should relate closely to these non-zoning laws. The whole group of laws—including your ag zoning laws, can reinforce one another to increase effectiveness of protecting farms from unwanted urban development.

Replace your single catch-all ag zone with a complete range of ag zones

This range of zones can include:

1. Exclusive farm use zones, that maintain agricultural land in farms with no other uses allowed by right. Non-farm agricultural uses (feedlots, stockyards, poultry and egg operations) can be allowed conditionally. You might have more than one such ag zone—to accommodate varying types of genuine agriculture that occur in your jurisdiction.

2. General agriculture zones, that maintain ag lands in farms but allow scattered urban

uses (farmettes/hobby farms, crossroads convenience stores and gas stations, single-family houses on urban-sized lots) conditionally on poorer ag soils and land.

3. Agricultural incipient urban growth zones, that maintain ag uses in farming areas whose location near urban areas means that they will likely become urban fringe areas in 10-15 years. Development standards require package sewage treatment for eventual connection to central urban systems, dedication of ROW to

NUMBER 87-35

HISTORIC LANDMARK PRESERVATION COMMITTEE
APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

Preservation Planner
Metropolitan Area Planning Department
City Hall, 10th Floor
455 North Main
Wichita, Kansas 67202
Phone: (316) 268-4421

Address of Property: 1557 Fairview

Name of Applicant: Mark Zavala

Address of Applicant: _____

Applicant's Phone: (Home) _____ (Office) _____

Name of Owner (if different): _____

Address of Owner (if different): _____

Owner's Phone: (Home) _____ (Office) _____

Contractor/Architect: Self

Contractor/Architect's Phone: _____

HAS THIS PROJECT BEEN STARTED? IF SO, HOW MUCH WORK HAS BEEN DONE?

DESCRIBE EACH MODIFICATION OR IMPROVEMENT, using one numbered section for each. Attach current photographs of each side of the structure, and detailed photographs of any area for which modification is planned. Please also provide drawings, in detail, for each improvement: these should include floor plans and architectural elevations. Materials and specifications should be listed in detail. A completion date should be projected for each portion of your project.

1. MODIFICATION: Re-roofing using same type of materials.

MATERIALS: _____

COMPLETION DATE: approx 30 days

(OVER)

widen country roads for eventual urban arterials, and conformance to intensive environmental requirements.

4. Urban-fringe agricultural zones, that encourage orderly and efficient expansion of urban land use into rural areas adjacent to towns, villages and municipalities. Rural land in these zones is undergoing intense urban construction and speculation as entire farms are converted to urban uses. Utilities and streets must meet urban design standards.

We urge you to read our June 11, 1984 issue of The Zoning Report: "How to write a first-rate agricultural-urban fringe zone district."

Each of these agricultural zones has its own specific list of uses allowed by right and conditionally. Uses do not accumulate from ag zones to urban fringe zones. Each zone has its own development and dimensional standards, rezoning procedures, definitions and exceptions that tie directly to the zone's planning purpose.

After you have a firm draft of your set of ag zones, then write your ag-based definitions. Avoid adapting definitions from model ordinances. Tailor your definitions to the specific mix of ag and fringe zones needed by your community. Use our quoted sample text in this issue as a starting point. Edit, revise and shift these quoted samples to fit the unique needs of your community.

Relate your farm definitions to your state's new ag development laws

The new laws in some states delete the exemption of farms from zoning. They allow you to establish a minimum zone lot size in rural areas to zone out small urban lots and non-farm uses and preserve legitimate farms. The laws allow communities to adapt new zoning standards and policies to zoning approval criteria subject to interpretation by specialists and your boards.

You and your legal counsel need to check these new state laws and regulations as to how they affect your revised zones and definitions. The new laws might change legal precedents and conservative case law guides that, in the past, may have constrained rural planning and zoning innovation.

The new state laws might require you to use certain statutory definitions and standards in your zoning definitions and zones. You may need to conform to new administrative regulations and standards prepared by state agencies empowered to carry out these new laws.

This legal research might be conducted by regional planning agencies and COG's for their local zoning jurisdictions. This would avoid duplicating legal research efforts. Perhaps a special technical advisory committee of legal counsels and planners could be set up by COG's and RPC's to guide this research.

New laws are being enacted for these issues:

1. Right-to-farm laws exempt farms and their ag operations from nuisance claims by newly-arrived suburbanites living nearby. These claims arise from the smells, dust, pollution and noise that are part of conventional farming. Some states are revising and updating right-to-farm laws enacted years ago. Your definition of farm may be critical to eligibility as a farm under these state laws, so you need to check recent state right-to-farm updates.

2. Tax incentives grant farmers deductions and rebates if they pledge to keep their farms in agriculture for a period of years (usually 10 years) and not convert them to non-farm uses or partition off residential lots or hobby farms.

The incentives are either reductions in real property tax assessments on farms or deductions from state income taxes on farm income. Eligibility as a farm under these laws and how farmers are to pledge to stay in agriculture might influence your zoning definition of farm.

3. Statewide significance laws mandate special procedures for reviewing certain local land development proposals. The laws apply to projects of defined major size throughout the

NUMBER 87-35

HISTORIC LANDMARK PRESERVATION COMMITTEE
APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

Preservation Planner
Metropolitan Area Planning Department
City Hall, 10th Floor
455 North Main
Wichita, Kansas 67202
Phone: (316) 268-4421

Address of Property: 1557 Fairview

Name of Applicant: Mark Javala

Address of Applicant: _____

Applicant's Phone: (Home) _____ (Office) _____

Name of Owner (if different): _____

Address of Owner (if different): _____

Owner's Phone: (Home) _____ (Office) _____

Contractor/Architect: Self,

Contractor/Architect's Phone: _____

HAS THIS PROJECT BEEN STARTED? IF SO, HOW MUCH WORK HAS BEEN DONE?

DESCRIBE EACH MODIFICATION OR IMPROVEMENT, using one numbered section for each. Attach current photographs of each side of the structure, and detailed photographs of any area for which modification is planned. Please also provide drawings, in detail, for each improvement: these should include floor plans and architectural elevations. Materials and specifications should be listed in detail. A completion date should be projected for each portion of your project.

1. MODIFICATION: Reroofing using same type of material.

MATERIALS: _____

COMPLETION DATE: approx 30 days

(OVER)

state, or all projects in specially-designated areas of special concern—or both. Projects of certain size (e.g., 250+ or 500+ dwellings, regional shopping centers and large employment/industrial developments) must be reviewed by regional and state development agencies for their regional and statewide impact. Areas of statewide critical significance are mapped or defined by state laws and regulations to be of critical environmental or economic importance (e.g., Chesapeake Bay tideland and shore areas). In either type of statewide review, your ag zoning regulations might need to conform to rules of state agencies for regulating major land development.

4. Environmental regulations authorized by new state laws may be able to override zoning decisions to convert land to urban uses. These regulations may establish environmental standards administered by state and county health agencies, water pollution control agencies, and state agencies for regulating soil conservation districts. These new standards may affect your ag zoning definitions.

Establish a complete set of agricultural definitions

This is done in three ways: by defining "farm" with the word "agriculture," by splitting the definition of farm into two definitions—"commercial farm" and "non-commercial farm," and by defining farm as one definition within a related set of 4-10 ag-based definitions.

1. Define "farm" and "agriculture." Zoning ordinances commonly interchange "farm" with "agriculture" as being the same word. This is OK for zoning ordinances with little ag activity or problems—and is common among zoning ordinances that have not been updated in recent years.

The word "agriculture" has a broader meaning than "farm." "Agriculture" is a broad class or type of uses, parallel in scope to residential, commercial and industrial uses. While it includes farms, it also includes non-farm ag uses

such as: feedlots; stockyards; poultry and egg operations that may involve thousands of fowl in buildings and lots on small acreages; mink and fur-bearing animal raising; fish farms; and special categories of farms.

2. Split the definition of "farm" into two or more definitions of farm to separate real farms from hobby farms. From a zoning viewpoint, genuine farms are "commercial farms," whose main business is farming intended to make a cash profit. Hobby farms are "non-commercial farms," that have insignificant ag operations and whose expected ag income is incidental to the total household income of the occupants.

Occupants of hobby farms commonly are commuter suburbanites whose suburban-like house occupies a 2-15 acre parcel "in the country." Occupants have dogs, perhaps a kennel, a pony, some ducks or chickens, a cow or slaughter steer and a garden—but most of their acreage in land is taken out of serious agricultural production.

3. Define "farm" within two sets of related agricultural definitions. One set consists of farms differentiated by the agricultural products they grow or raise, and the other set are those zoning activities that occur only on farms, differentiated from non-farm urban activities. Both sets of definitions try to minimize approvals for urban uses within ag zones.

Classifying farms into two or more definitions by their principal types of ag products restricts new farm uses in urban fringe ag zones to be compatible with nearby urban uses (usually no raising of livestock), and possible exemption from state right-to-farm laws for certain types of farms. Usual definitions for farms are: animal husbandry, plant husbandry, dairy farms, tree nurseries, christmas tree farms, forestry, viticulture, fruit and nut orchards, and fish farms.

Some zoning ordinances also define "piggeries" or the raising of hogs and pigs (and other animals or livestock) fed from garbage, offal or food not grown on the parcel. Piggeries are commercial feedlots or stockyards, which can

successfully operate on parcel smaller than hobby farms. Zoning ordinances prohibit them from urban-fringe ag zones and often list them as an exclusion from the definition of farm. They are separately defined—to be allowed as a conditional use in ag zones outside the urban fringe.

Zoning activities limited to farms include farm accessory uses, farm dwellings, farm buildings and structures, acceptable farm practice, and roadside farm produce stands.

List definitions of farms and other ag uses as by-right or conditional uses in your ag and urban-fringe zones. You would not allow non-commercial farms in "A-1" exclusive ag zones. You might perhaps allow them conditionally in "A-2" non-prime ag zones in areas shown to have poorer soils, steep slopes, poorer drainage. And you might allow non-commercial farms in "A-3" or "R-R" (rural residential) zones in urbanizing areas and exclude farms that raise animals, dairy farms and piggeries.

Relate your agricultural definitions to special environmental protection zones. These zones protect wetlands, aquifers, hillsides, erosive areas, and shorelines. You might set ag use standards in environmental protection zones to match standards set by your state's rural pollution control agency.

Consider regulating animal pollutants by defining standardized "animal units." These are defined by state pollution control agencies to regulate animal waste pollutants as the waste output of a typical beef steer being 1.0 "animal units." This standard indexes equivalent animal units of waste output for other farm animals.

Include or exclude these items from your farm definitions

Contiguity of farm parcels require that a "farm" be a single recorded land parcel. Contiguity includes land under the same ownership divided by public ROW and water courses.

Farm ownership is limited to a single title holder or set of title holders. Any other combination of title holders for abutting agricultural land probably defines that other land as a separate farm parcel. These rules involve land law and other non-zoning laws and rules; so you need to extensively involve your legal counsel in the analysis of farm parcel.

Lot size is critical to the definition of genuine and hobby farms. Make the minimum size of farm parcel smaller than the size of most smaller commercial farms in your area but larger than what would be a large hobby farm. You want to avoid excluding real farms from your definition but still keep hobby farms out of ag zones.

Hobby farms ("non-commercial farms") should also have a minimum size of lot, usually 2 or 3 acres. Residential uses smaller than that lot size are urban single-family dwellings.

Or define farm size from the opposite direction. Define maximum size of lot for hobby farms; your definition of farm does not include a minimum size of lot. Agricultural uses on any larger parcel is a farm. Maximum size for most hobby farms parcels is 5 to 10 acres.

This approach works well as a performance standard in density-based ag zones. Ag zones allow one non-farm dwelling unit (hobby farm or single-family dwelling) for every (say) 40 acres throughout the zone. A 160-acre farm could split off 4 non-farm units; two 20-acre farms, a single unit between them (one farm buying out the other's 1/2 unit).

Differentiate gross farm income from farm profit. Don't simply define farm income as agricultural profit. Many hobby farms can meet that test and many real farms (these days) can't.

Require two tests for farm income. Most farm gross income must be derived from agricultural products grown or raised on the land parcel. Gross farm income must be substantial enough to generate sufficient expected cash (or money) profit as the main source of household living income for the farm occupants.

Although many genuine farms today don't make a profit, they receive a substantial gross income from sales of products they raise or grow. Many farmers have off-farm jobs, but their primary intent is to derive a livable income from the farm.

List the typical agricultural products raised or grown in your area in your definition of farm. These products are those that local climate, soils, precipitation and terrain delimit to derive a livable household income on land parcels of economic size related to the crop. For example, size could be 500-1000 acres for range-land or 10-20 acres for growing berries.

Horses, ponies and dogs should not be listed as agricultural farm products in definitions of real farms. This exclusion avoids legitimizing hobby farms and large-lot single-family parcels as real farms in agricultural zones. These animals are kept for household pleasure or for hobbies (including kennels) and are not conventional ag products.

Serious raising and breeding of horses outside of specialized horse raising areas is unusual enough that zoning authorities can document this as a farm activity on a case basis. Criteria of lot size, gross income, expected farm profit and size of agricultural operation are other indicators of intent to run a real farm.

Avoid listing land productivity standards for raising or growing agricultural products in your ag definitions. These standards might vary by zone and even might vary by individual zoning application.

Quality of soil is the most common standard of land productivity used in performance-based agricultural zoning ordinances. The SCS tests local soils and classifies them into eight classes, each of which has sub-classes. SCS maps soils by classification in detail for a jurisdiction, usually a county or township. SCS soil scientists also interpret the behavior and usefulness of the soils found in your area for agricultural and urban activities. SCS soil surveys and interpretation of local soil types are considered professionally expert and dependable.

The first two or three soil classes—I, II or III, are defined by SCS as most suitable for agriculture, I being the best. Classes III or IV through VII are marginal and VIII is least suitable for agriculture. Your zoning ordinance would relegate or encourage non-ag uses, including hobby farms, to be located on the least suitable soils as mapped locally for land parcels. Otherwise, as a last resort, such uses can occupy prime soils.

The Land Evaluation and Site Assessment program, recently derived by SCS, is a complex system of standards that rates parcels for agricultural viability. LESA is adapted to local conditions jointly by SCS and local planners individually for planning jurisdictions. The higher the rating score, the better the parcel is for agriculture. Early experience with the LESA system indicates local planners prefer to use the less complicated LE portion. LE is based primarily on known soil classification information and a well-documented history of the relationship between soil classification and viability of land for farming.

We would encourage you to take a look at LESA. It might be adaptable to your area. Your primary reference is the "National Agricultural Land Evaluation and Site Assessment Handbook," US Dept of Agriculture, 1983.

Define single-family dwellings, buildings and structures on farms as being "farm dwellings, farm buildings, farm structures and farm accessory uses." Then define each of these four terms in your ordinance. You want to avoid the possibility that urban activity can successfully meet the test as a farm.

Farms are businesses that carry on extensive on-site industrial, storage and sales activities and contain a dwelling for the occupant or owner. Each of these activities alone are urban uses. But, all these activities are necessary to the total operation of the farm. And this business-industrial-residential aspect of farming must be recognized in farm definitions to exclude urban uses, dwellings, buildings, structures and accessory uses as farms.

Sample Text

We divide the sample text into three parts: (1), definition of "farm"; (2), definition of "agriculture"; and (3) other agricultural definitions.

Definition of "farm"

"FARM - land being used for agricultural purposes with 10 acres or more." (Will Co, Joliet IL. See definition, below, for agriculture.)

"FARM means an area used for agricultural operations, including truck gardening, forestry, the operating of a tree or plant nursery, or the production of livestock and poultry." (Tippecanoe Co, Lafayette, IN. No related definition of agriculture)

"FARM - A tract of land, 10 acres or more in size, which is principally used for agricultural activities such as the production of cash crops, livestock or poultry farming. Such farm may include agricultural dwelling and accessory buildings and structures necessary to the operation of the farm." (Wright Co, Buffalo, MN. See also related definition of agricultural use.)

"FARM: Real property used for commercial agriculture or horticulture comprising at least 40 contiguous acres and which may contain other contiguous or noncontiguous acreage, all of which is owned and operated by a single family, family corporation, individual, or corporation." (Model "Quarter/Quarter" Ordinance: Metropolitan Council of the Twin Cities Area, MN, as quoted from American Planning Association, Planning Advisory Service Report # 333: "Saving Farms and Farmlands: A Community Guide," by William Toner, p 28.)

"FARM, COMMERCIAL: A farm unit with all of the following characteristics:

"(a) The land is used for the primary purpose of obtaining a profit in money from activities described in Sections 401.03A and B, and 402.03A and B;

"b) the net income derived from farm products is significant; and

"(c) Products from the farm unit contribute significantly to the agricultural economy, to agricultural processors and farm markets.

"FARM, NON-COMMERCIAL: A parcel where all or part of the land is used for production of farm products for use or consumption by the owners or residents of the property, or which provides insignificant income."

(Section 401.03A and B are principal uses allowed by right in the exclusive farm use zone district, and Sec 402.03A and B, in the general agricultural district): "Farm uses as follows: The current employment of land, including that portion of such lands under buildings supporting accepted farm practices, for the purpose of obtaining profit in money by raising, harvesting, and selling crops or by the feeding, breeding, management and sale of, or produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products and any other agricultural or horticultural use or animal husbandry, or any combination thereof. Farm use includes the preparation and storage of the products raised on such land for man's use and animal use and disposal by marketing or otherwise."

(Section B): "Propogation and harvesting of forest products."
(Clackamas Co, Oregon City, OR)

"FARM. A farm is a parcel of land not less than 35 acres, in one ownership, which is used primarily for the commercial, soil-dependent cultivation of agricultural crop production and/or for the raising of livestock. The term "one ownership" shall include an individual, corporation, business trust, estate, trust, partnership, association, or two or more persons having a joint or common interest in the land."
(Spokane, WA)

"FARM: is a parcel or parcels of contiguous unplatted land of not less than 10 acres . . . which is directly farmed or used in the normal pursuits of agriculture by one farmer, and which may include establishments operating as

greenhouses, nurseries, orchards, chicken hatcheries, or apiaries. But establishments operating as fish hatcheries, stockyards, recreational parks, stone quarries, gravel pits, breeding or raising furbearing animals or game, or keeping more than the usual number of dogs or livestock usually kept on a farm shall not be considered farms hereunder as to the particular part or portion of the premises used or engaged in the operation of said enterprises; and provided, any other matter which emits an offensive odor and/or is obnoxious, detrimental, or dangerous to the public health or safety, or interferes with the peaceful enjoyment of property, shall be and is hereby declared to be a nuisance, per se, on a parcel of land of less than 10 acres . . .; the growing and selling of produce, animals, and fowl, and the keeping of bees shall be permitted under this (zoning ordinance), provided same is produced on said parcel of land and does not become a nuisance or obnoxious to the public health, morals, general welfare, or safety of the community." (Southfield MI)

Definition of agriculture

"AGRICULTURE. The planting, cultivating, harvesting and storage of grains, hay or plants, commonly grown in Box Butte County. The raising and feeding of livestock and poultry shall be considered an agriculture venture if the area in which the livestock or poultry is kept is 10 acres or more in area and shall not include operation of stockyards or a commercial feedlot." (Alliance NE)

"AGRICULTURE: Land, buildings and structures used for the raising of soil crops or raising of animals. It shall also include truck farming, poultry farming, fish hatcheries, bee-keeping, tree nurseries, sod nurseries, the raising of fruit and berries and selling the products thereof, as well as the storing, by the federal government or any of its duly designated agencies, of surplus grain. This shall not include buildings used primarily for residences. To

qualify for exemption from the necessity of obtaining permits, the above described agricultural operation must be on a tract of land of not less than 15 acres. The raising of crops or animals must be the principal occupation of residents or users thereof." (Kane Co, Geneva, IL)

"AGRICULTURAL USE - The use of land for the growing and/or production of field crops, livestock, and livestock products for the production of income including but not limited to the following:

a. field crops, including: barley, soy beans, corn, hay, oats, potatoes, rye, sorghum, and sunflowers.

b. livestock, including: dairy and beef cattle, goats, horses, sheep, hogs, poultry, game birds and other animals including dogs, ponies, deer, rabbits and mink.

c. livestock products, including: milk, butter, cheese, eggs, meat, fur and honey." (Wright Co, Buffalo, MN)

"AGRICULTURE - the use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floraculture, viticulture, and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities. Included are truck-farming, poultry farming, bee-keeping, raising or fruit and berries, and the selling of agricultural products, but shall not include mechanized industrial animal farms.

"The land area (farm) necessary to constitute an agricultural use is 10 acres. Agriculture shall not include the commercial feeding of garbage to swine or other animals." (Will Co, Joliet, IL)

Other agricultural definitions

"FARM USE includes the preparation and storage of the products raised on such land for

man's use and animal use and disposal by marketing or otherwise . . .

"CURRENT EMPLOYMENT of land for farm use includes (a) land subject to the soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P.L. 84-540 70 Stat. 188); (b) land lying fallow for one year as a normal and regular requirement of good husbandry; and (c) land planted in orchards or other perennials prior to maturity.

"As used in this Ordinance, ACCEPTED FARMING PRACTICE means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use." (Josephine Co, Grants Pass, OR)

"POULTRY FACILITY: A confined area or structure used intensively for raising, feeding, breeding, or holding chickens, turkeys and other poultry for eventual sale or the production of eggs.

"HORTICULTURE: The use of land for the growing or production for income of fruits; vegetables, flowers; nursery stock, including ornamental plants and trees; and cultured sod." (Model "Quarter/Quarter" Ordinance: Metropolitan Council of the Twin Cities Area, MN, as quoted from American Planning Association, Planning Advisory Report # 333: "Saving Farms and Farmlands: A Community Guide," by William Toner, p. 28.)

"ANIMAL UNIT - A unit of measure used to compare differences in the production of animal wastes which has as a standard the amount of waste produced on a regular basis by a slaughter steer or heifer. For purposes of these regulations, the following equivalents apply.

- "(1) Slaughter steer or heifer (all cattle), 1.0 (animal units)
- "(1) Mature dairy cow, 1.4
- "(1) Swine over 55 pounds, 0.4
- "(1) Sheep, 0.1
- "(1) Turkey, 0.018
- "(1) Chicken, 0.01
- "(1) Duck, 0.02

"(1) Horses, 1.0
 "Equivalents for other animals shall be defined by the Minnesota Pollution Control Agency." (Wright Co, Buffalo, MN)

"ANIMAL UNIT. For purposes of this (zoning) ordinance, an animal unit is the term used to describe the relationship of various animals that are being held or fed. Slaughter steers and heifers are assigned the base unit of 1.0. The following multipliers are used in determining animal units:

- "Slaughter steers and heifers, 1.0 animal units
- "Cow-calf, 1.3
- "Dairy cattle, 1.4
- "Horse, 0.75
- "Swine, 0.4
- "Sheep, 0.4
- "All fowl, 0.05 (Alliance NE)

* * * * *

IN THE NEXT ISSUE

In the March 21 issue we discuss general standards and policies for conditional uses. There is an increase in conditional uses in zoning ordinances and a number of ordinances are running into trouble with these boilerplate type of standards.

In our April issue, you get our annual no-nonsense review of practical books for zoning staff on a low-budget staff library. In May, sidewalks in subdivisions and zoning site plans.

* * * * *

We make every effort to present accurate information and sound opinion in this report. However, we do not guarantee results, accuracy, or assume liability for errors, omissions, or for information you may act upon. This publication does not purport to be engaged in the practice of law or give legal advice, but is the opinion of the editor and publisher solely as a professional urban planner.

PLANNING DEPARTMENT



June 16, 1987

Mr. Bob Young
City Hall
455 North Main Street
Wichita, Kansas 67202

Dear Mr. Young:

As per our telephone conversation on June 16, 1987 in reference to permissible uses by exception to the the Open Rural District (OR) section 656.342(c) of the Zoning Code, I have enclosed a copy of the same.

If there are any questions regarding the aforesaid, please do not hesitate to contact the undersigned at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Greg S. Kupperman".

Greg S. Kupperman

GSK/fs

Enclosure

RECEIVED

JUN 23 1987

METROPOLITAN PLANNING
ROUTE _____

ZONING CODE

(2) The open space is in the same general location and in the same general amount, or a greater amount.

(3) The buildings have the same or less number of stories or floor area, or both.

(4) The major streets follow approximately the same course.

(a) If development actions required by the ordinance creating a PUD are not taken within the time limits set by the Council in the ordinance, the approval of a PUD as provided in the ordinance shall become invalid and no further action shall be permitted under same.

(b) Following the enactment of an ordinance creating a PUD, a detailed development plan of all or part of the PUD shall be submitted to the Planning Commission for verification of substantial compliance with the approved sketch plan, accompanying written description of the intended plan of development and schedule of development approved as part of the ordinance which created the PUD. The Planning Commission shall review the final development plan and, if the plan is found to be in substantial compliance with this Zoning Code, the PUD ordinance and the standards of this section, shall approve the plan and forward an approved copy to the Building and Zoning Inspection Division.

History.—Ord. 82-553-568, s. 1; Ord. 83-591-400, s. 1.

656.334 Standards and performance criteria.—The Planning Commission may establish and adopt standards and performance criteria for PUD which shall provide requirements for open space, off-street parking, land-use intensity, setbacks and other design parameters, which shall be published and made available to interested parties for utilization in the planning and development of PUDs. After adoption by the Planning Commission, these standards and performance criteria shall be binding upon the development of PUDs and may be modified or amended only upon specific action by the Planning Commission. Appeals of requests for variances from the standards and performance criteria adopted by the Planning Commission may be granted in the same manner as other appeals or variances from this Code are granted.

History.—Ord. 82-553-568, s. 1; Ord. 83-591-400, s. 1.

Subpart E. Miscellaneous Districts

656.341 Airport, Commercial and Restricted Industrial District—ACRI.—These districts are intended to provide for land uses which are compatible on or within the vicinity of airports, taking into account the peculiarities of aircraft operations.

(a) *Permitted uses and structures.*

(1) airports, airport terminals, air cargo facilities and uses customarily related to airport operations.

(2) golf courses, tennis courts, driving ranges, par-three courses, outdoor recreational facilities; provided, that the uses shall not include seating or structures

to accommodate more than one hundred spectators or occupants.

(3) retail outlets for the sale of new and used automobiles, trucks or trailers, mobile homes, boats, automotive vehicle parts (but not automobile wrecking or storage yards, junkyards or scrap processing yards), heavy machinery and equipment, dairy and farming supplies, feed, fertilizer, lumber and building supplies, plant nurseries and similar products.

(4) service establishments such as auto rental and travel agencies, commercial parking lots and garages, automobile service stations or truck stops, laundry or dry cleaning establishments, veterinarian or animal boarding kennels, pest control, carpenter or cabinet shops, home equipment rental, marina, bait and tackle shops, commercial hunting or fishing camps and similar service facilities.

(5) outdoor markets for the sale of fruits or vegetable, poultry or fish markets.

(6) wholesaling, warehousing, storage and distribution establishments, building trades contractors including outside storage yards and heavy equipment and similar uses.

(7) truck or freight terminals, express offices and terminal facilities, telephone exchanges, repair or installation facilities and similar uses.

(8) agricultural, horticultural and forestry uses, including the keeping and raising of farm animals and poultry if structures for animals and poultry are not located within one hundred feet of a property line and if goats, sheep or swine are not kept or permitted within two hundred feet of a property line under different ownership.

(9) riding academies or boarding stables (if structures for the housing of animals are not located within one hundred feet of a property line), camping grounds and similar uses if there are no permanent residential facilities thereon.

(10) cemeteries, pet cemeteries, columbariums, crematories, mausoleums and similar uses.

(11) All of the permitted and permissible uses in the ACRI District are subject to the following provisions:

(i) Noise levels from an activity shall not exceed 75 dbA at a point where the district adjoins a commercial district and 65 dbA at a point where the district adjoins a residential district.

(ii) No use shall be allowed which emits an air pollutant so as to be subject to review by the State Department of Environmental Regulation under its permitting procedures.

(iii) No use shall be allowed which creates fugitive emissions.

(b) *Permitted accessory uses.*

(1) see s. 656.403.

(2) permanent or temporary housing for the owner or operator of farms or for farm labor, if that

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housing is limited to not more than one dwelling unit for each ten acres contained on the farms.

(3) barns, greenhouses, stables and other uses customarily accessory to agriculture.

(4) residential facilities (including not more than one mobile home) located on the same premises as an industrial use and used exclusively for watchmen or caretakers whose employment requires residence on the premises.

(5) Land application of Grade I domestic sludge pursuant to the requirements of Florida Administrative Code Rule 17-7.54(4) is considered to be a normal accessory use in conjunction with a permitted farming operation subject to no more than one (1) dry ton being applied per acre per year.

(c) *Permissible uses by exception.*

(1) aeronautical institutes or aircraft training facilities; and vocational, technical, trade or industrial schools and similar uses.

(2) motels, hotels, dude ranches, restaurants, establishments or facilities for the retail sale and service of alcoholic beverages for either on-premises or off-premises consumption, or both, drive-in restaurants, repair and service garages and motor vehicle body shops.

(3) retail outlets for the sale of general merchandise such as grocery stores, drugstores, furniture and appliance stores, department stores and similar uses.

(4) athletic complexes, auditoriums, convention centers, dance halls, spectator recreational areas, race-tracks for animals or vehicles, open-air theaters and similar uses.

(5) all types of professional and business offices.

(6) light manufacturing, processing (including food processing), packaging or fabricating; and printing, lithographing, publishing or similar establishments.

(7) bulk storage yards, including bulk storage of flammable liquids and acids; and outdoor storage yards, including automobile wrecking or storage yards and junkyards (but not scrap processing yards), subject to the condition that a storage not within a completely enclosed building or structure shall be visually screened by an eight-foot fence or wall not less than eighty-five per cent solid.

(8) stockyards or feeding pens, livestock auctions and poultry and animal slaughtering or dressing facilities.

(9) garbage dumps, sanitary landfills, trash disposal sites,* borrow pits, subject to the condition that the use shall be visually screened by an eight-foot fence or wall not less than eighty-five percent solid.

* So in original; should probably read "none".

(10) bus, railroad or other passenger transportation terminals.

(10)* Sludge disposal or utilization site.

* So in original; should probably be "11".

(d) *Minimum lot requirements (width and area).* There is no minimum lot requirement (width and area), except as specifically required for certain uses.

(e) *Maximum lot coverage by all buildings.* There is no maximum lot coverage by all buildings.

(f) *Minimum yard requirements.* There are no minimum yard requirements.

(g) *Maximum height of structures.* There is no maximum height of structures, except as established by s. 656.1015.

History—Ord. 82-553-568, s. 1; Ord. 83-391-400, s. 1; Ord. 85-674-217, s. 7.

656.342 Open Rural District—OR.—These districts are composed of large open land areas, public and private. It is intended that these districts retain, insofar as desirable and practicable, the open character of the land; to that end, permitted uses are basically limited to conservation, agriculture, recreation, forestry and, with certain limitations, other uses not contrary to the character of these districts.

(a) *Permitted uses and structures.*

(1) agricultural, horticultural and forestry uses, including the keeping and raising of farm animals and poultry, if structures for animals and poultry are not located within twenty-five feet of a property* line and if goats, sheep or swine are not kept or permitted within two hundred feet of a property line.

* So in original; should probably read "property".

(2) dude ranches, riding academies or boarding stables, if structures for the housing* animals are not located within one hundred feet of a property line, private camps (including day camps), country clubs, private clubs, golf courses, parks, camping grounds and recreational areas, playgrounds, playfields and government structures.

* So in original; should probably be followed by "of".

(3) game preserves, wildlife management areas, fish hatcheries and refuges; and watershed, water reservoirs, control structures and wells.

(4) single-family dwellings or mobile homes.

(5) foster care homes.

(6) family care homes.

(7) child care centers (not more than five children).

(b) *Permitted accessory uses and structures.*

(1) see s. 656.403.

(2) permanent or temporary housing for farm labor on the premises of agricultural activities requiring this labor.

(3) roadside stands only for the sale of agricultural products grown on the premises.

(4) barns, greenhouses, stables and other uses customarily accessory to agricultural, horticultural or forestry activities.

(5) Land application of Grade I domestic sludge pursuant to the requirements of Florida Administrative Code Rule 17-7.54(4) is considered to be a normal accessory use in conjunction with a permitted farming operation subject to no more than one (1) dry ton being applied per acre per year.

(c) *Permissible uses by exception.*

(1) see s. 656.401.

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- (2) sawmills.
- (3) radio or television transmitters, antenna and line-of-sight relay devices.
- (4) airports, airparks, airstrips and airfields.
- (5) garbage dumps, sanitary landfills and trash disposal sites.
- (6) animal hospitals, veterinary clinics, animal boarding places, fur farms and dog kennels; provided, that no structure for the housing of animals shall be located within two hundred feet of a property line unless in a soundproof building.

(7) rifle, shotgun or pistol shooting ranges, field archery ranges, gold* driving ranges and par-three golf courses.

* So in original; should probably read "golf".

(8) poultry and animal slaughtering and dressing and livestock auction facilities.

(9) marina, bait and tackle shops, commercial hunting or fishing camps.

(10) sanitariums, rest homes, group care homes, nursing homes, convalescent homes, residential treatment facilities, homes for orphans or aged, if none of these facilities is closer than fifty feet to a property line.

(11) sale and service of alcoholic beverages for on-premises consumption in conjunction with a permitted or permissible use.

(12) retail outlets for live plants, fresh fruit and vegetables grown on premises, feed, fertilizer and other farm supplies. Retail outlets for live plants and fresh fruit and vegetables shall not be on lots or parcels having road frontage of less than two hundred feet and containing less than one and one-half acres.

(13) racetracks for animals or vehicles.

(14) cemeteries, columbariums, crematories and mausoleums.

(15) monasteries, convents, churches and temporary revival establishments.

(16) Sludge disposal or utilization site.

(d) *Minimum lot requirements (width and area).*

(1) all uses:

- (i) minimum lot width—100 feet.
- (ii) minimum lot area—65,000 square feet.

(2)*

* So in original as amended; there is no text in paragraph (2).

(e) *Maximum lot coverage by all buildings.* The maximum lot coverage by all buildings for all uses is ten percent.

(f) *Minimum yard requirements.* The minimum yard requirements for all uses and structures is:

(1) front—25 feet.

(2) side—10 feet; provided, that the combined side yards shall not be less than 25 feet.

(3) rear—10 feet.

(g) *Maximum height of structures.* The maximum height of structures for all uses is thirty-five feet.

History—Ord. 82-553-568, s. 1; Ord. 83-591-400, s. 1; Ord. 85-1013-548, s. 1; Ord. 85-676-817, s. 8; Ord. 86-866-481, s. 1.

656.343 Government Use District—GU.—It is the intent of this Zoning Code that lands which are owned by federal, State or local governments and are used for a purpose which is particularly and peculiarly related to governmental functions shall be placed in a GU District. A lawful government activity is permitted upon the lands without restriction so long as the title to the land is vested in the government. This provision shall not be deemed to prevent the use by a government of lands located in districts other than GU, if the use is in compliance with all provisions of this Zoning Code applicable to the other districts.

(a) *Permitted uses and structures.* The permitted uses and structures are for a lawful governmental activity.

(b) *Minimum lot requirements (width and area).* There is no minimum lot requirements (width and area).

(f) *Minimum yard requirements.* There are no minimum yard requirements.

(g) *Maximum height of structures.* There is no maximum height of structures.

History—Ord. 82-553-568, s. 1; Ord. 83-591-400, s. 1.

Part 4. Supplementary Regulations

656.401 Supplementary regulations.—In addition to the permissible uses by exception listed in Part 3, the following uses by exception shall be permissible by exception in the districts indicated and shall conform to all supplementary regulations listed under the use. Where the following uses are listed as a permissible use by exception in Part 3, the supplementary regulations listed under the use shall apply.

(a) Animals other than household pets shall be permissible use in a residential district subject to the limitation that horses and ponies may be kept only for private riding use and provided a minimum lot area of one and one-half acres is provided; if a place or shelter there before is provided, it shall not be closer than fifty feet to a private property line. If a shelter is provided for fowl, it shall be no closer than forty feet to a private property line. Goats, sheep or swine shall not be kept or permitted within two hundred feet of a private property line.

(b) A borrow pit is a permissible use by exception in all districts subject to the regulations contained in Part 9.

(c) Cemeteries and mausoleums (but not funeral homes or mortuaries) are a permissible use by exception in all residential districts.

(d) Child care centers, including day nurseries and kindergartens, shall be subject to the following limitations:

(1) Minimum lot area shall not be less than the minimum lot area of the district of which it is a part and lot width of portion used for fenced play area shall not be less than the minimum required lot width of the district of which it is a part.

(2) A fenced outdoor play area of not less than four hundred fifty square feet shall be provided and lo-

JACKSONVILLE LAND USE REGULATIONS

cated in the rear yard and to the rear of the structure on corner lots.

(3) Facilities, operation and maintenance shall meet applicable City regulations and child care standards of the State Department of Health and Rehabilitative Services for that use.

(4) An off-street parking, loading and unloading area shall be provided which adequately and safely provides for off-street parking, loading and unloading of children, including the stacking of automobiles.

(e) Churches are a permissible use by exception in all residential districts and the minimum lot size shall be not less than two acres in residential districts.

(f) Golf courses are a permissible use by exception in all residential districts, subject to the following conditions:

(1) The parcel of land (excluding residential lots, streets and so forth) for the use contains not less than one hundred acres.

(2) All buildings including the pro shop, maintenance building and office shall be located not closer than two hundred fifty feet from a property line.

(g) Home occupations are a permissible use by exception in a district which does not include these occupations as a permitted use, subject to the following conditions:

(1) No person or independent contractor other than members of the family residing on the premises shall be engaged in the occupation.

(2) The use of the premises for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and shall, under no circumstances, change the residential character thereof.

(3) There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of the home occupation. No sign shall be posted on the subject property unless otherwise provided for by the Planning Commission which, in any case, shall not exceed one square foot in area and shall be non-illuminated and mounted flat against the wall of the principal building at a position not more than two feet from the main entrance to the residence.

(4) No home occupation shall be conducted in an accessory building or structure which is not attached to and part of the principal structure or an open porch or carport, except in the case of the teaching of ceramics, where one kiln may be permitted in an accessory building or structure.

(5) No home occupation shall occupy more than twenty-five percent of the gross floor area of the dwelling unit, exclusive of the area of an open porch or attached garage or similar space not suited or intended for occupancy as living quarters.

(6) No traffic shall be generated by the home occupation in greater volume than would normally be expected in a residential neighborhood and a need for

parking generated by the conduct of the home occupation shall meet the off-street parking requirements in other than the required front yard.

(7) No equipment or process shall be used in the home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in a radio or television receiver off the premises or causes fluctuations in line voltage off the premises.

(8) The giving of art, piano or other instructions or lessons shall be limited to not more than four persons at the same time.

(9) Fabrication of articles which are commonly classified under the terms of arts and handicrafts may be deemed a home occupation, subject to the other terms and conditions of this definition.

(10) No storage, fabrications or sales of any type shall be permitted on premises except those incidental to the teaching activities permissible under paragraphs (4), (8) and (9).

(11) No sales shall be conducted on the premises except those incidental to the teaching activities permissible under paragraphs (4), (8) and (9).

(h) A mobile home on an individual lot shall be a permissible use by exception in a residential district in which the use is not otherwise permitted, subject to the limitation that the lot or parcel of land upon which the mobile home is to be located shall not be less than the single-family dwelling lot requirements in the district.

(i) Off-street parking lots for premises requiring off-street parking are subject to the following conditions:

(1) *Residential districts.*

(i) These parking lots shall adjoin the premises requiring off-street parking, except in the RMOI district where the parking lots shall be within four hundred feet of the premises requiring off-street parking.

(ii) The hours of use shall be limited to the hours of 7:00 a.m. to 11:00 p.m. unless otherwise provided by the Planning Commission.

(iii) There shall be no storage, sales or service activity of any kind on these lots.

(iv) Vehicles parked on the lot shall be limited to automobiles for employee and customer parking.

(v) These parking lots shall be designed to meet the requirements of Part 12, Subpart A.

(vi) A six-foot visual barrier not less than eighty-five percent solid shall be erected along the edges of portions of such lots adjoining land in the residential districts unless releases are secured from all such adjoining property owners.

(2) *Commercial districts.*

(i) These parking lots shall be within four hundred feet of a premises requiring off-street parking.

(ii) A six-foot masonry or wood wall not less than eighty-five percent solid shall be erected along the edges of portions of these lots adjoining residential

PLANNING DEPARTMENT
Suite 700, Florida Theatre Building
128 East Forsyth Street
Jacksonville, Florida 32202-3325



7-101



Mr. Bob Young
City Hall
455 North Main Street
Wichita, Kansas 67202



*Draft modifications
since 12-23-88*

8-4-88

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: new elements are underlined, (~~deletions marked thru~~).

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:
1. Animal hospitals, except as provided in Subsection F. hereof.
 2. Auto and other vehicle repair except as provided in Subsection F. hereof.
 3. Funeral homes.
 4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
 5. Medical or dental clinics or hospitals.
 6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
 7. Renting of trailers, cars or other equipment.
 8. Restaurants except as provided in Subsection F. hereof.
 9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
 10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.

11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under Subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 200 feet from adjacent property lines or public street right-of-way. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.
5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.

6. The provisions of Subsections C.1.a., C.1.c, C.3.b, and C.3.c shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
 - uses determined by the Board of Zoning Appeals to be similar in character to those listed above.
9. The Board of Zoning Appeals may by variance increase by 100% or decrease by 50% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions

or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacted on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

8-4-88

AMEND "R" AND "R-1" DISTRICTS

A. USES PERMITTED

1. AGRICULTURE: including forestry and the raising and wholesaling of nursery stock; the raising and retail sales of Christmas trees; and the storage and sale of firewood on tracts 20 acres or more in size.

8. Conditional Uses:
 - i. Horseriding academy or rodeo arena.

 - k. Greenhouse for wholesaling and research purposes only.

 - o. Storage and sale of firewood on tracts less than 20 acres in size.

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: new elements are underlined, (~~deletions marked thru~~).

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:
1. Animal hospitals, except as provided in Subsection F. hereof.
 2. Auto and other vehicle repair except as provided in Subsection F. hereof.
 3. Funeral homes.
 4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
 5. Medical or dental clinics or hospitals.
 6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
 7. Renting of trailers, cars or other equipment.
 8. Restaurants except as provided in Subsection F. hereof.
 9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
 10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.

11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under Subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 200 feet from adjacent property lines or public street right-of-way. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.
5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.

6. The provisions of Subsections C.1.a., C.1.c, C.3.b, and C.3.c shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
 - uses determined by the Board of Zoning Appeals to be similar in character to those listed above.
9. The Board of Zoning Appeals may ^{by} variance increase by 100% or decrease by 50% the allowances set out in conditions 1, 2, 3, 4, 5 and 7 above and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions

or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

8-4-88

AMEND "R" AND "R-1" DISTRICTS

A. USES PERMITTED

1. AGRICULTURE: including forestry and the and the raising and wholesaling of nursery stock; the raising and retail sales of Christmas trees; and the storage and sale of firewood on tracts 20 acres or more in size.

8. Conditional Uses:

i. Horseriding academy or rodeo arena.

k. Greenhouse for wholesaling and research purposes only.

o. Storage and sale of firewood on tracts less than 20 acres in size.

8/4/03
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DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions marked thru)~~.

E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity, ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 500 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.
5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.
6. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.

- antique restoration.
- assembly, maintenance and repair of agricultural implements and equipment.
- assembly of small mechanical devices and components.
- automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
- custom butchering, meat curing and processing.
- household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the Board of Zoning Appeals to be similar in character to those listed above.

9. The Board of Zoning Appeals may by variance increase ^{by 100%} or decrease ^{by 50%} the allowances set out in conditions 1, 2, 3, 4, 5, 6 and 7 above ~~up to 100%~~ and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.

2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

8/4/88
~~6-23-88~~

AMEND "R" AND "R-1" DISTRICTS

A. USES PERMITTED

1. Agriculture; including forestry and the raising and wholesaling of nursery stock; the raising and retail sales of Christmas trees; and the ~~boarding and training of horses~~ on tracts ~~40~~ 20 acres or more in size.

** storage and sale of firewood*

8. Conditional Uses:

- i. Horseriding academy; ^{or} a polo field; rodeo arena; and the ~~boarding of horses on tracts of less than 40 acres in size.~~

- k. Greenhouse for wholesaling and research purposes only.

- o. Storage and sale of firewood ^{on tracts less than 20 acres in size.} and ~~other severed crops.~~

7/7/88

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked-thru)~~.

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

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F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 20 acres.
2. The rural home occupation may not be conducted within 600 feet of a dwelling of a person not engaged in a rural home occupation.
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 25 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within ~~300~~ 600 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. Landscape material must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter.
5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.
6. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.

8-4-88

- antique restoration.
- assembly, maintenance and repair of agricultural implements and equipment.
- assembly of small mechanical devices and components.
- automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment.
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage subject to screening as set out in Article F.4 above regardless of on-site location.
- custom butchering, meat curing and processing.
- household dining establishments conducted within the main residence by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the Board of Zoning Appeals to be similar in character to those listed above.

9. ^{up 100%} The Board of Zoning Appeals may by variance increase or decrease ^{up 50%} the allowances set out in conditions 1, 2, 3, 4, 5, 6 and 7 above ~~up to 100%~~ and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.

2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.
4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

7/7/88
12/23/87-

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions-marked-thru)~~.

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:
1. Animal hospitals, except as provided in Subsection F. hereof.
 2. Auto and other vehicle repair except as provided in Subsection F. hereof.
 3. Funeral homes.
 4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
 5. Medical or dental clinics or hospitals.
 6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
 7. Renting of trailers, cars or other equipment.
 8. Restaurants except as provided in Subsection F. hereof.
 9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
 10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
 11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. RURAL HOME OCCUPATIONS PERMITTED. In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of ~~20~~ ^{20.5} acres, ~~not subject to administrative or BZA adjustments.~~
2. ~~The rural home occupation may not be conducted within 600 feet of a dwelling or a public street zoned for a rural home occupation.~~
3. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
4. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 300 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning. *Landscape material must provide the desired screening effect within the first growing season following installation and*
5. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation. *throughout the year every year thereafter.*
6. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
7. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
8. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - ~~assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small~~

parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.

- assembly of small mechanical devices and components.
- automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul *Conducted exclusively within an enclosed structure with no outdoor storage of vehicles, parts or equipment.*
- bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
- blacksmith shop, welding, heat treating and machine shop.
- contractor's storage *subject to screening regardless of on-site location.*
- custom butchering, meat curing and processing.
- household dining establishments *within the residence* conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
- manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
- production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
- uses determined by the *Board of Zoning Appeals* ~~County Zoning Administrator~~ to be similar in character to those listed above.

9.8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4, & 6 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.

4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.

12/23/87

DRAFT OF PROPOSED EXPANSION OF THE
HOME OCCUPATION PROVISIONS OF THE
SEDGWICK COUNTY ZONING RESOLUTION

It is recommended that the definition clause of the home occupation section of the Sedgwick County Zoning Resolution be amended to read as follows: (new elements are underlined).

- B. DEFINITION: A business, profession, occupation or trade conducted for gain, conducted entirely within a residential building, or when permitted by Subsections C., and F., within a structure that is accessory to a residential building.

It is recommended that the prohibited use section of the home occupation section be amended to read as follows: (new elements are underlined), ~~(deletions marked thru)~~.

- E. PARTICULAR HOME OCCUPATIONS PROHIBITED: Permitted home occupations shall not, in any event, be deemed to include:

1. Animal hospitals, except as provided in Subsection F. hereof.
2. Auto and other vehicle repair except as provided in Subsection F. hereof.
3. Funeral homes.
4. Kennels and stables when carried on as a business activity. ~~and not a hobby with coincidental occasional sales and use.~~
5. Medical or dental clinics or hospitals.
6. Nursery schools and day care centers having more than 4 students at a time, unless specifically permitted by the district regulations.
7. Renting of trailers, cars or other equipment.
8. Restaurants except as provided in Subsection F. hereof.
9. Tourist homes, except as provided in Subsection F. hereof or unless specifically permitted by the district regulations.
10. Contractor's equipment and material storage center except as provided in Subsection F. hereof.
11. Any use first permitted in the "E" light industrial or "F" heavy industrial districts unless specifically listed under subsection F.7. hereof.

It is recommended that a new Section F. be added to the home occupation section of the Sedgwick County Zoning Resolution to read as follows:

F. **RURAL HOME OCCUPATIONS PERMITTED.** In addition to the home occupations allowed by Subsection D., rural home occupations are allowed on sites in the "R" rural residential and "R-1" suburban residential zoning districts under the following conditions:

1. Each lot or tract shall be located upon a federal or state highway or a section line road and shall contain a minimum of 5 acres not subject to administrative or BZA adjustments.
2. The rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3000 square feet, whichever is greater.
3. Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet. The storage area shall be located behind the front of the building within which the home occupation is conducted and no closer than 50 feet from adjacent property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 200 feet of a property line or public right-of-way. Fences used to accomplish screening shall be constructed to prevent the passage of debris or light and constructed of either brick, stone, architectural tile, masonry units, wood or similar material (not including woven wire), and shall be not less than six nor more than eight feet in height. Landscape material intended to be used for screening purposes must be indicated on a plan drawn to scale and submitted for approval to the Sedgwick County Zoning Administrator and the Director of Planning.
4. No more than two (2) persons other than persons occupying the dwelling unit as their residence shall be employed in any home occupation.
5. The provisions of Subsections C.1.a, C.1.c, C.3.b., and C.3.c. shall apply.
6. One on-site, free-standing (or attached to an accessory building), non-illuminated sign up to 12 square feet in size located outside public right-of-way is permitted.
7. Uses permitted in addition to those allowed by Subsection D. include:
 - animal hospital and veterinary clinic.
 - antique restoration.
 - assembly, maintenance and repair of agricultural implements and equipment.
 - assembly of electrical appliances, electronic instruments and devices, radios, VCR's, TV's, phonographs and computers including electroplating and production of small

- parts only such as coils, condensers, transformers, conductors, semiconductors, and crystal holders.
 - assembly of small mechanical devices and components.
 - automobile painting, upholstery, rebuilding, renovation, reconditioning, body and fender works and truck and tractor repair and overhaul.
 - bed and breakfast establishments (tourist homes) limited to three rooms for let and subject to all applicable codes concerning tourist accommodations and food handling enterprises.
 - blacksmith shop, welding, heat treating and machine shop.
 - contractor's storage.
 - custom butchering, meat curing and processing.
 - household dining establishments conducted by prior reservation only, limited to 16 patrons and subject to applicable licensing and building code requirements.
 - manufacturing of pottery, statuary figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - production, compounding, processing, packing or treatment of such products as bakery goods, candy, dairy products and food related products.
 - production, fabrication and assembly of small implements used in the home, office, shop, garage, lawn, garden, and farm.
 - uses determined by the County Zoning Administrator to be similar in character to those listed above.
8. The Board of Zoning Appeals may by variance increase or decrease the allowances set out in conditions 2, 3, 4 & 6 above up to 100% and may establish additional conditions or limitations of approval determined appropriate and may attach such conditions or limitations to the premises and/or to the person(s) conducting the home occupation.

The permitted uses as identified in the existing text and referred to by section numbers above are as follows:

"D. HOME OCCUPATIONS PERMITTED. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsections B. and C. of this Section:

1. Artists, authors or composers, dancers, music teachers, and other similar artists, including instruction thereof; provided that instruction shall be limited to not more than five (5) pupils at a time, except dancing instruction, which shall be limited to not more than fifteen (15) pupils at a time.
2. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, appliance repairs, etc.
3. Office facilities for ministers, rabbis, and priests.

4. Office facilities for architects, engineers, lawyers, doctors, dentists, and members of similar professions.
5. Office facilities for salespersons, sales representatives, manufacturers representatives, when no retailing or wholesaling is made or transacting on the premises.
6. Office facilities for service-type businesses such as insurance agents, brokers, decorators, painters, business consultants, tax advisers, and photographers.
7. Personal services, such as dressmakers, seamstresses, tailors, barber shops, beauty shops.