CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

6/22/2010

Donald L. and Micha Sullivan
9409 E Lincoln
Wichita KS 67207

RE: BZA2010-00019 City Appeal of Presumption of Abandonment of nonconforming manufactured home site on property zoned SF-5 Single-Family Residential, generally located west of Byrd Street and 75 feet north of Webb Road (629 N Byrd Street).

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the City Board of Zoning Appeals on **May 25, 2010.** This resolution reflects the official action of the Board. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please call our office at 268-4421.

Sincerely,

Donna Goltry

Donna Goltry, Principal Planner
Current Plans Division

DG/yja

Cc: Kurt Schroeder, Office of Central Inspections, 1-72
Paul Hays, Office of Central Inspections, 1-72
J R Cox Office of Central Inspection, 1-72
Susan Schlapp, WCC II, 1-13

OFFICE OF CENTRAL INSPECTION

455 N. Main Street, City Hall, Wichita, Kansas 67202
Telephone: (316) 268-4481 Fax: (316) 268-4663

Drainage

Code

CASE #: COM2008-03404 **Date: 7/23/2008**

NOTICE OF VIOLATION

Closed 6/15/09

Case Location: 629 N BYRD

Primary Name: THOMAS MARTIN
Primary Address: 132 LOCHINVAR

WICHITA KS 67207

Needed improvements and/or corrections to property are listed below:

CHAPTER 26.04.030/26.04.060

CHAPTER 26.04 MH PARK ORD:
Chapter 26.04 Mobile Homes and Mobile Home Park Regulations:
Section 26.04.030 - Park License required
Section 26.04.035 - License Refusal to issue or renew
Section 26.04.036 - Service of Notice of violations
Section 26.04.060 - License and Permit fees
Section 26.04.115 - Enforcement and Inspection
Section 26.04.038 - Appeal from refusal to issue or renew (Ord.No. 47-050, adopted June 2006)
UZC VII.G.2.g - Abandonment of Non-conforming MH spaces and/or use

Failure to make payment on Mobile Home Park License for 629 N Byrd on parcels zoned "SF-5" /Non-conforming. License expired 05-03-07. City of Wichita Licensing Dept. sent a delinquency notice 05-18-07- no payment received. Original non-conforming file submitted was for 3 MH spaces; however, two of the three spaces have been vacant for more than 12 months; therefore, those two non-conforming MH spaces have been abandoned per Wichita/Sedgwick County Unified Zoning Code (UZC VII.G.2.g). Any potential future licensure for MH Park use will be for 1 space only. NOTE: PER UZC VII.G.2.G: For non-conforming MH Parks within the City of Wichita, the failure to license such parks.....for a period of 24 consecutive months shall constitute abandonment of the non-conforming use.

To date (07-23-08), the Office of Central Inspection's (OCI) records indicate there are no active violation cases other than the above notice of violation (delinquent in payment). The Office of Central Inspection reserves the right to refuse license renewal if there are any active violation cases (Housing, Environmental, Zoning, etc).
If the Mobile Home Park license renewal is refused, a written appeal filed with the City Council can be made by the applicant/licensee within ten business days after the date of the refusal to renew a license.

Questions?: Contact either Tina Henry, Commercial Zoning Inspector or Randy Sparkman @ 268-4479.

You are hereby notified that you will have until 9/9/2008 to correct or resolve the above-identified violations of the Drainage code.

If you do not take action to correct the above violations by 9/9/2008, a ticket of Uniform Criminal Complaint may be filed against you.

Please contact our office at 268-4481 should you have any questions or concerns. or comments

Tina Henry

Staff ID: Tina Henry **Next Compliance Date:** 9/9/2008

Certified Mail No: 7007 3020 0002 2413 7800

CITY OF WICHITA

CUSTOMER / OCI

Exhibit A

OFFICE OF CENTRAL INSPECTION

455 N. Main Street, City Hall, Wichita, Kansas 67202
Telephone: (316) 268-4481 Fax: (316) 268-4663

Commercial Zoning

Code

CASE #: COM2009-04340 **Date: 8/5/2009**

NOTICE OF VIOLATION

Case Location: 629 N BYRD

Primary Name: DONALD & MICA SULLIVAN
Primary Address: 9409 E LINCOLN

WICHITA KS 67207

Needed improvements and/or corrections to property are listed below:

CHAPTER 26.04 MH PARK ORD

CHAPTER 26.04 MH PARK ORD:
Chapter 26.04 Mobile Homes and Mobile Home Park Regulations:
Section 26.04.030 - Park License required
Section 26.04.035 - License Refusal to issue or renew
Section 26.04.036 - Service of Notice of violations
Section 26.04.060 - License and Permit fees
Section 26.04.115 - Enforcement and Inspection
Section 26.04.038 - Appeal from refusal to issue or renew (Ord.No. 47-050, adopted June 2006)
UZC VII.G.2.g - Abandonment of Non-conforming MH spaces and/or use
UZC VII.G.3 - Overcoming Presumption of Abandonment

OFFICIAL NOTIFICATION OF LOSS OF NON-CONFORMING STATUS AND REFUSAL TO RENEW MOBILE/MANUFACTURED HOME LICENSE.
The Mobile Home Park License for 629 N Byrd (1space) on parcels zoned "SF-5" Single Family 5 Residential expired 05-03-07. Per Wichita-Sedgwick County Unified Zoning Code (UZC) VII.G.2.G: "For non-conforming manufactured home parks within the City of Wichita with fewer than five manufactured home spaces, the failure to occupy any space for a period of 12 consecutive months shall constitute an abandonment of the non-conforming use for the particular space. A space shall be considered occupied if the manufactured or mobile home meets the minimum requirements for a residential occupancy permit and utilities have not been disconnected for greater than 180 consecutive days."
"For non-conforming manufactured home parks within the City of Wichita, the failure to license a manufactured home space pursuant to chapter 26.04 for a period of twelve consecutive months shall constitute abandonment of the non-conforming use for that space. Such space may not be subsequently licensed by Chapter 26.04 and has lost its allowed nonconforming use."
UZC VII.G.3: "Overcoming presumption of abandonment. A presumption of abandonment based solely on the length of time a land use has remained vacant or inactive (See Secs. VII-G.2.e and VII-G.2.f) may be rebutted upon a showing, to the satisfaction of the Board of Zoning Appeals, that during such period the owner of the land or structure....."
To date (08-05-09), the Office of Central Inspection's (OCI) records indicate there is an active Housing code violation case (COM2009-04141), besides the above stated Zoning case. (Please see attached case violations with conditions for corrections.) Questions?: Contact either Tina Henry, Commercial Zoning Inspector or JR Cox, Interim Commercial Zoning and Signs Supervisor @ 268-4479.

Staff ID: Tina Henry Tina Henry **Next Compliance Date:** 9/6/2009

Certified Mail No: 7009 0080 0001 8197 5292

CITY OF WICHITA

CUSTOMER / OCI

Exhibit B

Case History 629 N Byrd
Current parcel owner Donald and Mica Sullivan

Chapter 26.04 Mobile Home/Manufactured Home Park Ordinance
Section 26.04.030 - Park License Required
Section 26.04.035 - License Refusal to issue or renew
Section 26.04.036 - Service of Notice of Violations
Section 26.04.060 - License and Permit fees
Section 26.04.115 - Enforcement and Inspection
Section 26.04.038 - Appeal from refusal to issue or renew
(Ord. No. 47-050, adopted June 2006)
Wichita/Sedgwick County Unified Zoning Code (UZC):
UZC VII.G.2.g - Abandonment of Non-conforming MH spaces and/or use

On 07-23-2008, the Office of Central Inspection-Commercial Zoning, sent a notice of violation to then parcel owner, Thomas Martin, for failure to make payment on the Mobile Home/Manufactured Home Park License citing the above codes. "Failure to make payment on Mobile Home Park License for 629 N Byrd on parcels zoned "SF-5"/Non-conforming. **MH Park license expired 05-03-07.** "Original non-conforming file submitted was for 3 MH spaces; however, two of the three spaces have been vacant for more than 12 months; therefore, those two non-conforming MH spaces have been abandoned per the Wichita/Sedgwick County Unified Zoning Code. Any potential future licensure for MH Park use will be for 1 space only." (see attached notice dated 07-23-08)

Commercial Zoning was given the impression from the parcel owner that the property was going to auction and that he did not intend to keep the license going, and that the existing 1 MH would be removed as part of the closing requirements.

Approximately end of May 2009/early June 2009, Commercial Zoning had an impromptu office meeting with new owner Donald Sullivan. He was advised at that time the parcel had lost the non-conforming (NC) status. He was unaware of any case history of the parcel. Auction date was 09-09-08 (per Mr. Sullivan).

On 08-05-09, Commercial Zoning sent Donald and Mica Sullivan an official notification of loss of non-conforming status and overcoming presumption of abandonment (UZC VII.G.3) (see attached notice dated 08-05-09). There is an active Housing notice of improvement case COM2009-04141.

TIDEMARK
COMPUTER SYSTEMS, INC.

Conditions Associated With
Case #: COM2009-04141

8/6/2009
8:39:02AM

Condition Code	Title	Hold	Status	Status Changed By	Updated Date	Updated By
H406	EXTERIOR: Windows/Doors * 20.04.050/20.04.055 - Repair or replace windows and/or doors to be weathertight, in sound condition and good repair, and free of cracks and holes.*** Repair boarded up window.	HwO	NOT MET		7/26/2009	DER
H411	EXTERIOR: Miscellaneous Install dryer vent cover	HwO	NOT MET		7/26/2009	DER
H600	ACCESSORY STRUCTURES: Garage/Shed * 20.04.050/20.04.070 - Repair and paint garage and/or shed(s).***	HwO	NOT MET		7/26/2009	DER
Z015	MOBILE HOME:Block & Tiedown Section 26.04.215/216 - Mobile home anchors and tie downs required. Connect or tighten all tie downs as necessary.	HwO	NOT MET		7/26/2009	DER
Z017	OTHER VIOLATIONS: Trailer located too close to property lines.	HwO	NOT MET		7/26/2009	DER

OFFICE OF CENTRAL INSPECTION

455 N. Main Street, City Hall, Wichita, Kansas 67202
Telephone: (316) 268-4481 Fax: (316) 268-4663

Commercial Zoning

Code

CASE #: COM2009-04340 **Date: 8/5/2009**

NOTICE OF VIOLATION

Case Location: 629 N BYRD

Primary Name: DONALD & MICA SULLIVAN
Primary Address: 9409 E LINCOLN

WICHITA KS 67207

Needed improvements and/or corrections to property are listed below:

CHAPTER 26.04 MH PARK ORD

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Section 26.04.038 - Appeal from refusal to issue or renew (Ord.No. 47-050, adopted June 2006)
UZC VII.G.2.g - Abandonment of Non-conforming MH spaces and/or use
UZC VII.G.3 - Overcoming Presumption of Abandonment

OFFICIAL NOTIFICATION OF LOSS OF NON-CONFORMING STATUS AND REFUSAL TO RENEW MOBILE/MANUFACTURED HOME LICENSE.
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"For non-conforming manufactured home parks within the City of Wichita,
the failure to license a manufactured home space pursuant to chapter 26.04
for a period of twelve consecutive months shall constitute abandonment of
the non-conforming use for that space. Such space may not be
subsequently licensed by Chapter 26.04 and has lost its allowed nonconforming use."
UZC VII.G.3: "Overcoming presumption of abandonment. A presumption of abandonment based solely on the length of time a land use has remained vacant or inactive (See Secs. VII-G.2.e and VII-G.2.f) may be rebutted upon a showing, to the
satisfaction of the Board of Zoning Appeals, that during such period the owner of
the land or structure....."
To date (08-05-09), the Office of Central Inspection's (OCI) records indicate there is an active Housing code violation case (COM2009-04141), besides the above stated Zoning case. (Please see attached case violations with conditions for corrections.) Questions?: Contact either Tina Henry, Commercial Zoning Inspector or JR Cox, Interim Commercial Zoning and Signs Supervisor @ 268-4479.

Staff ID: Tina Henry Tina Henry **Next Compliance Date:** 9/6/2009

Certified Mail No: 7009 0080 0001 8197 5292

CITY OF WICHITA

CUSTOMER / OCI

BZA RESOLUTION NO. 2010-00019

HAVING CONSIDERED THE ENTIRE RECORD REGARDING THIS MATTER AND HAVING HEARD THE EVIDENCE AS PRESENTED TO THE BOARD HERE TODAY, THE BOARD MAKES THE FOLLOWING FINDINGS:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d) and Section 2.12.590 of the Code of the City of Wichita, Kansas;

2. That the Board makes the following finding of fact:

   a. Based upon the evidence presented the Board reverses the decision of the Superintendent of the Office of Central Inspection and determines that the legal nonconforming use of the property in question was not abandoned by the owner.
   b. The owner of the property has 60 days from the date of the hearing to fix the conditions cited by the Office of Central Inspection.
   c. The owner of the property has 60 days to obtain the appropriate licenses from the Office of Central Inspection for the use of said mobile home.
   d. The owner shall caused to be removed by producing a work order with KG& E, within 60 days of this hearing, the two remaining utility service connections.

THEREFORE, BASED UPON THE FOREGOING, THE BOARD RESOLVES THAT THE DETERMINATION OF THE OFFICE OF CENTRAL INSPECTION THAT THE NONCONFORMING USE OF THE PROPERTY LOCATED AT 629 N. BYRD, WICHITA, KANSAS WAS ABANDONDED IS HEREBY REVERSED SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ABOVE.

ADOPTED AT WICHITA, KANSAS, this 25th day of May, 2010.

Dwight Greenlee, BZA Board Chair

ATTEST:

Donna Goltry, Assistant BZA Secretary

Westar Energy
Estimating / Construction Services Department
Fax: 316-261-6423 or 316-261-6979

Sent to: Name/Company Donna Goltry

Number of pages 2 (Including cover sheet)

Date 07/26 Fax No. _____

- ☐ Travis Allender 261-6242
- ☐ Ed Barbee 261-6424
- ☐ Miles Capps 261-6824
- ☐ Brandon Chadd 261-6251
- ☐ H. Carl Hagman 261-6796
- ☐ Heide Hancock 261-6554
- ☐ Bill Henning 261-6775
- ☐ Reed Holbrook 261-6360
- ☐ Marsha Jesse 261-6734
- ☐ Kati Kremeier 261-6524
- ☐ Zach Laws 261-6264
- ☐ Karen Mathia (316) 261-6213
- ☐ Ken McLemore 261-6774
- ☐ Shane Price 261-6315
- ☐ Jackie Rolfe 261-6552
- ☐ Lee Sailsbury 261-6859
- ☐ Denise Smiley 261-6557
- ☐ Kemp Smith 261-6511
- ☐ Rondee Sutton 261-6876
- ☑ ~~Becky~~ Thompson 261-6320
- ☐ Randy Truitt 261-6512
- ☐ LaDonna Vanderford 261-6490
- ☐ Hank Velghe 261-6828
- ☐ Greg Viecelli 261-6457
- ☐ Brian Ward 261-6217
- ☐ Bert Wiggins 261-6245
- ☐ Tye Wright (316) 261-6844

REMARKS Order to remove all abandon services to customer owned meter poles.

PEND 2801
629 BYRD ST 7 WK 0727 08 06248
WICHITA KS 67206 HM G E I RES 2442423549
F28RJT SOMO SOMO **ISSUE SERVICE MAINTENANCE ORDER** 07/26/10 12:36
750121702010

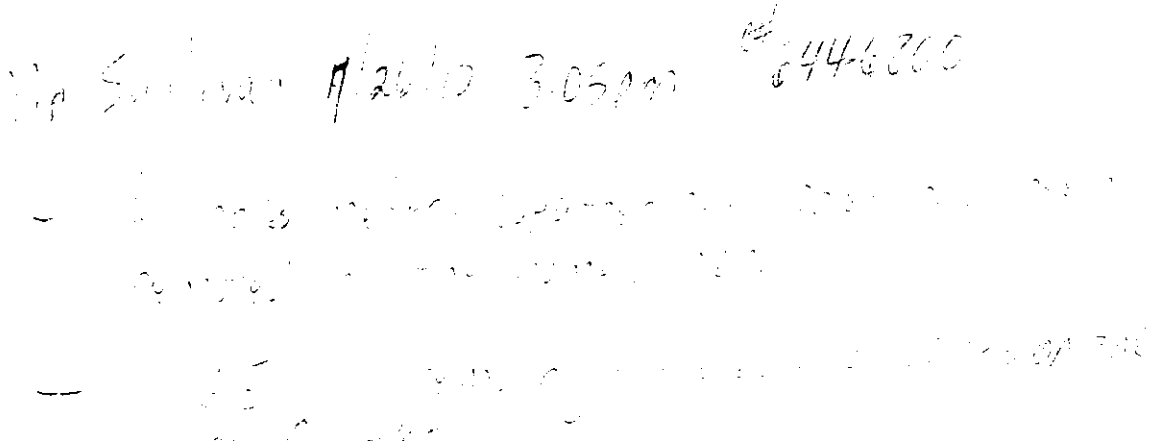
DATE WANTED : 07/27/10 Time Wanted: 08:00 Window: 08 SVC GUAR: N
REQUESTED BY : DON SULLIVAN/RJT CONTACT PHONE : 316 644-6800
ASSIGN TECH :

AMEND: **VOID:**

SWITCHING(FIELD USE)	TREES	REINSTALL LOCK RING
REMOVE LOCK RING	PAL/HI-LITER	ASSIST(FIELD USE ONLY)
DROP SERVICE LINE	STREET LIGHT	SERVICE UPGRADE/CHANGE
DISC NOTIFICATION	RESEAL METER	YELLOW SEAL INVESTIGATE
NPSO RECHECK--SISO	LOW USE CHECK	SET CHART(FIELD USE ONLY)
S REMOVE SERVICE ONLY	CHECK FOR NRM	RATE/ADDRESS VERIFICATION
INACTIVE WITH USAGE	METER PROBLEM	MEET ONSITE/OUTAGE LOCATES
1/3 DROP IN DE CHECK	OTHER EXAMPLES	FIELD/CREW WORK(FIELD USE)

REMARKS: REMOVE ALL ABANDONED SERVICES TO EMPTY METER CANS ON CUSTOMER OW
NED METER POLES/APPROX 4 SERVICES
LAST TRANSACTION NOT COMPLETED

NEXT FUNCTION: DATA: 0114



May 25, 2010 AGENDA ITEM # 2
BZA2010-19 6 PRESENT

BZA
VOTING ROSTER

COMMISSIONER	YES	NO	ABSTAIN
YOUNG	✓		
FOSTER	✓		
GREENLEE (CHAIR)	✓		
ANTHIMIDES A			
BLICK	✓		
THOMPSON	✓		
HERMANN	✓		

_____IN FAVOR
_____OPPOSED
_____ABSTAINED

Draft 1:Minutes Foster w/ corrections
Thompson

Young — 3 requires to establish jurisdiction met
Bd has "
~~Hermann~~
Blick Move that reverse OCI decision
based on facts applete submittal
suff. evide
& by authority of Bd to reverse OCI

4 conditions - except move from property line 60 days

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: Members of the Wichita Board of Zoning Appeals

FROM: Donna Goltry, Assistant BZA Secretary

SUBJECT: BZA2010-00019, Appeal of Decision of Abandonment of Nonconforming Use of 629 N. Byrd, Wichita, KS

DATE: May 17, 2010

BZA2010-00019 is an Appeal of Presumption of Abandonment of a nonconforming manufactured home space on property zoned SF-5 Single-Family Residential. The property is generally located west of Byrd Street and 75 feet north of Webb Road (629 North Byrd Street). The appeal is filed by the current property owners, Donald & Micha Sullivan.

Please see the enclosed memo provided by Jeff A. VanZandt, Assistant City Attorney, to the Board. Attachments to the memo include:

Exhibit A - Office of Central Inspection Notice of Violation dated 8/23/2008;

Exhibit B - Office of Central Inspection Official Notification of Loss of Non-Conforming Status and Refusal To Renew Mobile/Manufactured Home License dated 8/5/2009;

Exhibit C – Application and supplementary documentation from the applicant supporting the appeal.

This information is provided for the Board's consideration of this appeal at the meeting to be held Tuesday, May 25, 2010, at 1:30 PM in the MAPC Conference Room.

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: Members of the Wichita Board of Zoning Appeals

THROUGH: Donna Goltry, Assistant BZA Secretary

FROM: Jeff A. VanZandt, Assistant City Attorney

SUBJECT: BZA 2010-00019, Appeal of Decision of Abandonment of Nonconforming Use of 629 N. Byrd, Wichita, KS

DATE: May 17th, 2010

The subject real property was annexed by the City on or about October 29, 1999. At that time there were three authorized mobile home spaces on the property. On April 25, 2006, Mr. Thomas Martin, the owner of the property at that time, registered the property pursuant to Section VII-I of the Code and also obtained a license for a nonconforming Manufactured Home Park, as required by Chapter 26.04 of the Code of the City of Wichita. This license expired on May 3, 2007. On July 23, 2008, Mr. Martin was sent Notice of Violation from the City's Office of Central Inspection informing him that pursuant to Section VII-G(2)(g) two of the three spaces were deemed abandoned and the license for the remaining space had expired and that if he failed to renew said license within 24 months after the date the expiration (May 3, 2009) the remaining space would be also deemed abandoned. (See Exhibit "A" attached hereto)

Appellant purchased the subject real property at auction on or about September 9, 2008. On August 5, 2009, the Office of Central Inspection mailed an Official Notification of Loss of Non-Conforming Status and Refusal to Renew Mobile/Manufactured Home License to appellant. (See Exhibit "B" attached hereto) This notice stated as the basis for the loss of nonconforming use as a violation of Section VII-G(2)(g). This appeal, to challenge the determination of abandonment by OCI as to the one remaining space, was filed, on April 20, 2010 to this Board including supplementary documentation from the appellant supporting his appeal. (See Exhibit "C" attached hereto)

The authority of the Board of Zoning Appeals to hear appeals is set forth in Article VI, Section E(2) of the Wichita-Sedgwick County Unified Zoning Code ("Code") which states:

> The Board of Zoning Appeals shall have the authority to hear all appeals of the Zoning Administrator's written interpretation of provisions in this Code including interpretations of provisions of Conditional Uses, CUPs, PUDs and P-Os. In exercising such appeal power, the Board of Zoning Appeals may reverse or affirm wholly or partly or may modify the interpretation of the Zoning Administrator. If the Board of Zoning Appeals determines that is necessary to obtain additional evidence in order to resolve the matter, it shall have the authority to remand the appeal to the Zoning Administrator

with directions to obtain such evidence and to reconsider the decision in light of such evidence. The Board of Zoning Appeals' decision shall be the final local action on such an application.

The Board must first determine if it has jurisdiction to hear the appeal of the appellant. This includes three aspects: 1) the authority of the Board to hear the appeal; 2) is the appellant the appropriate party to file and appeal and, (3) the timeliness of the appeal. To assist in making this determination, the Board is directed to the following provisions of the Code or the Board's Bylaws:

1) Article V, Section V-F(1) of the Code states as follows: "The Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, enforcing any provision of this Code or any other development code, including but not limited to the Sign Code and the Landscape Code, wherein the appeal authority has been granted to the Board of Zoning Appeals."

2) Article V, Section V-F(2) of the Code states that as follows: "An appeal may be filed by any person aggrieved, or by any officer of the city or county or any governmental agency or body affected by any decision of any officer administering the provisions of this Code or the provisions of any other development code wherein the appeal authority has been granted to the Board of Zoning Appeals.

3) Article V, Section V-F(3) of the Code provides that the appeal must be directed to the appropriate Board depending on the location of the property. Thus, appeals for property located within the city limits must be directed to the Board of Zoning Appeals. Also this Section specifies that the application for the appeal must be made within the time limit specified by the rules of the appropriate Board of Zoning Appeals. The Bylaws of the Wichita Board of Zoning Appeals, Article III(3)(a)(i) specifies that appeals shall be filed within 30 days after a ruling has been made by the Superintendent of Central Inspection.

If the Board determines it does not have jurisdiction to hear this appeal, then the Board should articulate its reasons for the lack of jurisdiction and the appeal is dismissed. If the Board determines it does have jurisdiction, the next step is to review the appropriate Code provisions relating to nonconforming use, the standards for resumed abandonment of the nonconforming use and the evidence presented by the appellant to overcome said presumption of abandonment.

The standards for nonconformities are set forth in Article VII of the Code. The policy of the City and County is stated in Section VII - A(2) of the Code as follows:

It is the general policy of the City and County to allow Uses, Structures or Lots that came into existence legally and in conformance with then-applicable requirements but that do not conform to all of the applicable requirements of this Code to continue to exist and be put to productive use, but to bring as many aspects of such Use into conformance with the current Code as is reasonably practicable, all subject to the limitations of this Article. The limitations of the Article are intended to recognize the

> interests of the property owner in continuing to use the property but to control the expansion of the Nonconformity and to control re-establishment of abandoned Uses and limit re-establishment of Buildings and Structures that have been substantially destroyed. An exception to this general policy relating to the location of Sexually Oriented Businesses is set forth in Sec. VII-J.

The applicability of this Article of the Code, as set forth in Article VII - A(3), is stated as follows:

> No use of a Building, Structure or property and no Building, Structure or property that complied with the zoning ordinance or zoning resolution in effect prior to March 25, 1996, shall become or be deemed to have become nonconforming or noncomplying due to the adoption of this Code. Any use of a Building, Structure or property and any Building, Structure or property that complied with the zoning ordinance or zoning resolution in effect prior to March 25, 1996, may be rebuilt, repaired or otherwise re-established to the extent that it existed prior to March 25, 1996, subject to the limitation in Sec. VII-I. [Registration of Nonconformities]

Section VII-H requires that in all cases "the property owner shall have the burden of establishing that a Nonconforming Use or Nonconforming Structure lawfully exists under this Code by a preponderance of evidence that shows the existence of the Nonconformity is more likely than not when the evidence is viewed in its totality."

Section VII-G addresses the issue of discontinuance or abandonment of the nonconformity and G(2) sets forth examples of when the nonconforming use shall be "presumed" abandoned. Under Kansas law, a presumption of abandonment can be challenged by the party aggrieved by the determination of abandonment. Abandonment, under the law, imports an intent on the part of the user to abandon his or her right to an nonconforming use of the premises, as well as an actual cessation of the use in issue. Therefore, abandonment requires an intention to abandon or relinquish the nonconforming use and some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. Section VII-G(3) provides examples of situations which can be used to overcome the presumption of abandonment under the Code. Although, this Section references that these examples may only apply to Sections VII-G(2)(e) and VII-G(2)(f), utilizing the general principals of document interpretation under Kansas law that the document should be viewed as a whole, Section VII-G(2)(g)(1), (2) and (3) are presumptions of abandonment subject to being challenged by an appellant.

If the Board determines that the decision of the Office of Central Inspection to deem the nonconforming use of the subject property as abandoned was reasonable then it's decision should be affirmed. If the Board determines that the Office of Central Inspection's decision was unreasonable or that the appellant has presented sufficient facts to rebut the presumption of abandonment, then the Board has the authority to reverse, affirm wholly or in part, or modify the decision of Mr. Schroeder. The burden of proving the determination of the Office of Central Inspection as unreasonable or overcoming the presumption of abandonment is on the appellant.

In rendering its decision, it is important for the Board to issue an order that summarizes the evidence and outlines the basis for its decision.

This memo outlines the standards of review the Board should follow on appeal cases. If the Board members have any questions, I would be happy to provide further clarification.

Jeff A. VanZandt
Assistant City Attorney