CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

April 6, 2011

Lisa Hambelton, Phil Nightingale or Jeff Horning
11771 West Kellogg
Wichita, Kansas 67209

RE: CON2010-00047 – City Conditional Use to permit a Heliport on property generally located at the southeast corner of West Kellogg and 119th Street (11771 West Kellogg).

Dear Ladies and Gentlemen:

At its regular meeting on April 5, 2011, the Wichita City Council considered the above captioned request. The action of the Council was to approve the request subject to the following conditions:

A. The Conditional Use permits the operation of a prior permission required heliport, as defined by the Federal Aviation Administration (FAA). The site shall be developed, maintained and operated in conformance with: the approved site plan; Chapter 9.24 of the Code of Ordinances of the City of Wichita dealing with heliports; applicable noise and lighting ordinances and all applicable local, state or federal rules or regulations.

B. Prior to commencing operations, proof of Federal Aviation Administration approval shall be provided to the Planning Department, if applicable.

C. Only the areas and activities identified on the approved site plan shall permit heliport activities. Use of the remainder of the 21-acre site for heliport activities will require adjustment or amendment to the approved site plan. General aviation activity is prohibited.

D. Flight operations shall be restricted to six Saturdays per year during the months from April to September, with the exception that flight operations may also occur on the "day after Thanksgiving." All flight operations shall occur between the hours of 10:00 a.m. and 5:00 p.m. There shall be at least 21 days between flight operations. Landing and take-off approaches are prohibited over residential developments.

E. Except for lighting on the aircraft, strobe lights are prohibited. Any lighting used for heliport operations shall be screened or shielded so that it does not create a traffic hazard or be a nuisance to adjoining property owners.

F. This Conditional Use expires one year from the date of final approval. The 21 acres currently developed as Mel Hambelton Ford are not eligible for temporary heliport

licensing per Chapter 9.24 of the Code of the City of Wichita during the duration of this Conditional Use.

G. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The action of the City Council is final. If you have any questions concerning this application please contact the Metropolitan Area Planning Department at 268-4421.

Sincerely,

Dale Miller
Current Plans Manager
Current Plans Division

CC: Roger and Kimberly Runft, 11847 West Carr Ct., Wichita, KS 67209
Cindy Gordon, 1819 South Covington Ct., Wichita, KS 67209
Ed Roberts, 11514 West Chatsworth, Wichita, KS 67205
Howard R. Moore, 1500 South Wheatridge Street, Wichita, KS 67235-1037
Ronald and Nona Williams, 11814 West Carr, Wichita, KS 67209
Mary Westbrook and Blasi Campground, 11409 West Kellogg, Wichita, KS 67209
Leroy Stine, Reshaven, 11800 West Kellogg, Wichita, KS 67209
Mark Hansen, 11800 West Highway 54, Wichita, KS 67209
Thomas and Vicki Tanner, 11914 West Carr, Wichita, KS 67209
Paul and Hanna Curtis, 12507 West Harry, Wichita, KS 67235
Lois Davis, 11706 West Carr Circle, Wichita, KS 67209
Joseph and Bernardo and Socorro Flores, 11906 West Carr Ave., Wichita, KS 67209
Gretchen Colon, 11910 West Carr, Wichita, KS 67209
Kenneth Tuxhorn, 11710 West Carr Circle, Wichita, KS 67209
Ken and Sharon Grunden, 11903 Carr Ct., Wichita, KS 67209
WCC IV, Paul Gray, Mail Stop 1-13
WCC V, Jeff Longwell, Mail Stop 1-13
N. A. IV, Kelli Glassman, Mail Stop 1-135
N. A. V, Megan Buckmaster, Mail Stop 1-135
Julianne Kallman, Engineering, Mail Stop 1-71
Bob Thompson, Fire
J. R. Cox, Central Inspection

RESOLUTION No. 11-061

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO ALLOW A HELIPORT ON APPROXIMATELY 4.81 ACRES ZONED LI LIMITED INDUSTRIAL ("LI"), GENERALLY LOCATED ON THE SOUTHEAST CORNER OF 119TH STREET WEST AND KELLOGG, IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 48-451 AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS:

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, permit a Heliport on 4.81 acres zoned LI Limited Industrial, legally described below:

Case No. CON2010-00047

Lots 1, 2, 3, 4, 5 and a 110-foot by 122-foot portion of Lot 6, Mel Hambelton Addition to Sedgwick County, Kansas, as shown on the approved site plan, generally located on the southeast corner of 119th Street West and Kellogg.

SUBJECT TO THE FOLLOWING CONDITIONS:

A. The Conditional Use permits the operation of a prior permission required heliport, as defined by the Federal Aviation Administration (FAA). The site shall be developed, maintained and operated in conformance with: the approved site plan; Chapter 9.24 of the Code of Ordinances of the City of Wichita dealing with heliports; applicable noise and lighting ordinances and all applicable local, state or federal rules or regulations.

B. Prior to commencing operations, proof of Federal Aviation Administration approval shall be provided to the Planning Department, if applicable.

C. Only the areas and activities identified on the approved site plan shall permit heliport activities. Use of the remainder of the 21-acre site for heliport activities will require adjustment or amendment to the approved site plan. General aviation activity is prohibited.

D. Flight operations shall be restricted to six Saturdays per year during the months from April to September, with the exception that flight operations may also occur on the "day after Thanksgiving." All flight operations shall occur between the hours of 10:00 a.m. and 5:00 p.m. There shall be at least 21 days between flight operations. Landing and take-off approaches are prohibited over residential developments.

E. Except for lighting on the aircraft, strobe lights are prohibited. Any lighting used for heliport operations shall be screened or shielded so that it does not create a traffic hazard or be a nuisance to adjoining property owners.

F. This Conditional Use expires one year from the date of final approval. The 21 acres currently developed as Mel Hambelton Ford are not eligible for temporary heliport licensing per Chapter 9.24 of the Code of the City of Wichita during the duration of this Conditional Use.

G. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date

_____, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, City Attorney

Agenda Item No.

City of Wichita
City Council Meeting
April 5, 2011

TO: Mayor and City Council

SUBJECT: CON2010-00047 – Conditional Use to permit a Heliport on property zoned LI Limited Industrial; generally located at the southeast corner of 119th Street West and Kellogg (11771 West Kellogg) (District IV)

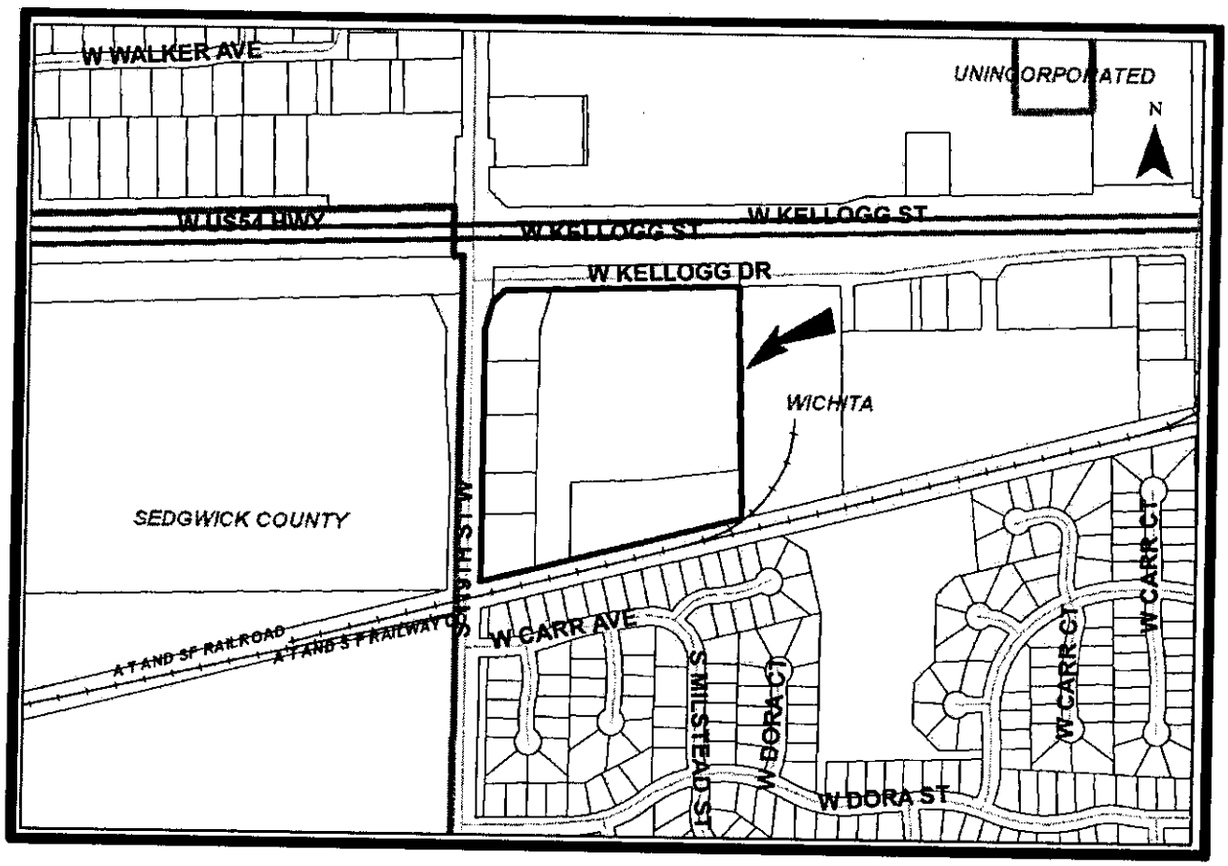
INITIATED BY: Metropolitan Area Planning Department JLS

AGENDA: Planning (Non-Consent)

DAB Recommendation: DAB IV, Approve (unanimous); DAB V, Deny (5-3).

MAPC Recommendation: Deny (6-6-1).

MAPD Staff Recommendation: Approve.



Background: The applicant initially was seeking Conditional Use approval for a "heliport" on 21 platted acres located at the southeast corner of Kellogg and 119th Street West. The application area was later reduced to approximately 4.81 acres (revised site plan attached). The property is zoned LI Limited Industrial ("LI"), and a majority of the original site, 13.01 acres (Lot 6, Mel Hambelton Addition), is developed as the Mel Hambelton Ford dealership. The extreme western portion (approximately 4.81 acres) of the original site has become the revised application area, which has an average approximate north-south length of 1,058 feet with an east-west width of 206.44 feet and is undeveloped, but platted as Lots 1-5, Mel Hambelton Addition. The proposed "heliport" would be operated as a "prior permission required" private heliport, meaning that the heliport would be limited to use by only those aircraft given permission by the property owner to land or take-off (as defined by the Federal Aviation Agency). The heliport would not be open to general aviation use.

The applicant's revised site plan shows three distinct areas. The first area is a smaller rectangle of 110 by 122 feet (on Lot 6) whose center appears to be located approximately 350 feet south of the site's north property line and 261 feet east of 119th Street's eastern right-of-way. This smaller rectangle is a proposed landing and take-off area to be used especially during Mel Hambelton promotional events, and when not used as a heliport is used to display vehicles. The cars that typically occupy that paved space can be moved and fencing can be put up using existing light poles located in the display lot to isolate the landing pad. At its closest point, this landing and take-off area is located within approximately 735 feet of the northern property line of lots located in the residential subdivision, Lark Addition, located south of the application area. When taking off from the smaller rectangle, the helicopter would head into the wind, side-slip to the west to the area identified on the site plan as a second, larger rectangle and use the greater length of the larger rectangle as the helicopter's transition area to increase height and speed. Helicopter pilots typically prefer to gradually increase their height as they move forward at take-off, similar to a plane, rather than use a maximum performance, straight up and down take-off. It is the same, only in reverse for a landing.

The second area identified on the site plan is the larger previously mentioned rectangle of some 200 by 700 feet (Lots 1-3 and approximately the northern 30 feet of Lot 4, Mel Hambelton Addition) located immediately west of the previously described smaller rectangle. This 200 by 700-foot rectangle can be used as the previously described transition area for take-off and landing as well as another landing area. The northern boundary of this second rectangle coincides with the southern boundary of Kellogg Drive right-of-way. The southern boundary of this second rectangle is located, at its closest point, approximately 315 feet north of the application's southern property line or 415 feet from the residential subdivision, Lark Addition, that is located an additional 100 feet south of the application area across a rail banked railroad right-of-way. On the northern end of this second rectangle, closest to the frontage road, there are two artificial rock mounds used to display vehicles. This second rectangle also has a structure located along its west side.

The third rectangle shown on the site plan is located south of the second rectangle and is identified as the "over-fly safety zone." On the site plan, the over-fly safety zone does not have any dimensions, but scales out at 200 feet (east to west) and 220 feet (north to south). That north-south length places the southern boundary of the over-fly safety zone within approximately110 feet of the applicant's southern property line or 210 feet from the northern boundary of the residential lots located south of the rail banked railroad right-of-way.

Initially, the applicant's representatives indicated they would like to have the potential to land on the entire 21-acre site, and that there was the prospect that a structural evaluation of the existing Mel Hambelton building would be undertaken to see if it could support or be modified to support helicopter flight activities. When the application was later reduced to the approximately 4.81 acres under consideration, the option of landing on the existing building was eliminated. At that same meeting, the applicant's representatives indicated: the helicopter operator was FAA certified as an air carrier; the air space over the application area was under the control of the Wichita Mid-Continent Airport control

tower; the helicopter operator has a one year contract (with mutual agreement for one-year extensions) to provide air carrier services for Mel Hambelton, including all promotional events; the number of flights (take off and landing) could be as high as six per hour with a day and one-half being the typical number of flight days per week; flights could occur both during the day or night; they will not fly over the residences located to the south unless safety considerations force them to and the helicopter operator is currently based at Mid-Continent Airport.

Heliports are permitted by the Unified Zoning Code in the LI zoning district by Conditional Use approval. Chapter 9.24 of Code of Ordinances of the City of Wichita contains some development standards and approval procedures for the licensing of heliports: no heliport, other than a temporary heliport may be located within 750 feet of a church, school or residence as measured from the center of the touchdown pad of the heliport to the property line of the church, school or residence. If the heliport is located on a building, the distance shall be calculated as the sum of the number of feet the heliport is located above the ground and the number of feet from a point at ground level where a vertical line from the center of the touchdown pad of the heliport strikes the ground of the property line of the church, school or residence. No heliport, other than temporary, can be located within 2,000 feet of any other heliport. A primary surface is to be identified and is to be free of obstructions. Approach surfaces are to begin at the end of the primary surface and extend outward and upward for a horizontal distance of 4,000 feet with a 500-foot width. Transitional surfaces shall extend outward and upward from the lateral boundaries of the heliport primary surface and the approach surface at a slope of two-to-one for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces. The design of the heliport is to comply with the U.S. Department of Transportation, Federal Aviation Administration's "Heliport Design-Advisory Circular 150/5390-2A," as amended. A helicopter is not allowed to remain upon a structure for more than 48 hours. No helicopter shall land at a heliport within the city limits unless the pilot is registered as a licensed FAA pilot. The code requires the licensee to carry $200,000 of public liability and $100,000 comprehensive property damage per accident insurance. Sec.9.24.050 (B) states that "...the fire chief may grant the license, grant the license with conditions, or deny the license."

It appears that the physical location of the principal landing area (the 110 by 122-foot rectangle and the center of the 700 by 200 foot rectangle) is estimated to be five to 15 feet short of the 750-foot separation distance required by the code and, if approved, the center of any landing zones will need to be moved northward.

Planning staff has been advised by Wichita Mid-Continent Airport staff that the proposed heliport does not pose any risk or hazard with their flight operations. It is also planning staff's understanding that promotional heliport activities have previously occurred on several occasions on the site under the City's temporary heliport licensing authority. At the time this report was written, the Office of Central Inspection had not received any calls concerning these earlier flights; however, planning staff has received one letter of opposition (attached) and one phone call. The letter speaks for itself. The phone caller indicated that the helicopter noise caused him uneasiness as it reminded him of his time in the military.

The application area is located adjacent to a nationally significant highway and part of a more intensely developing transportation corridor. Surrounding property has a variety of zoning and uses: to the north is Resthaven Cemetery zoned LI; to the northwest are medical/dental offices zoned GC; to the east is a warehouse-office zoned LI; to the south are over 100 single-family residences, zoned SF-5 Single-family Residential ("SF-5") and to the west is undeveloped land zoned SF-20 Single-family Residential ("SF-20").

Staff is not aware of any existing non-airport based private heliports in the city other than those located at hospitals. Issues one would expect to be of concern would be safety of flight operations and noise. The

city's existing ordinance dealing with helicopters summarized above indicates that 750 feet of separation from churches, schools or residences is adequate to address those issues.

Analysis: This application was originally heard by the Metropolitan Area Planning Commission (MAPC) on December 16, 2010, at which time the MAPC deferred the case to its January 20, 2011, meeting. (December 16, 2010, MAPC Minutes attached.) At the December 16, 2010, MAPC meeting, the applicant was not present, and it was noted DAB IV was not scheduled to hear the application until after the December 16, 2010, MAPC meeting. Neighboring property owners opposed to the proposal were present at the first MAPC meeting. (Nona William's, Howard Moore's and Blasi Campground letters attached.) The MAPC deferred action until DAB IV had a chance to make a recommendation, and to give staff time to communicate the MAPC's and the opposition's comments to the applicant to see if the proposal could be adjusted to address the stated concerns.

The applicant was present at the January 5, 2011, DAB IV meeting, and agreed to: reduce the application area to the 4.81 acres discussed earlier; operate only during daylight hours; avoid flying over houses unless safety issues required such a flight path and to eliminate the use of strobe lights in and around the landing area. (December 16, 2010 letter from DWTA, Premier Aviation Services attached). At the DAB meeting, a number of neighbors spoke in opposition citing concerns with: noise, safety, fear that the use could limit future development options on nearby undeveloped ground and impact on the serenity of Resthaven Cemetery. Nearby residences explained how noise from the helicopter had, in the past, awakened them, and indicated that many of them were third shift workers who sleep during the day. A representative of the Blasi Campground explained how noise is one of the factors used to evaluate campgrounds and negative noise ratings from customers could reduce the attractiveness, and ultimately, the success of their facility. District Advisory Board IV voted 7-0 to recommend approval of the request as modified by the applicant. (January 25, 2011, DAB IV memo attached.)

At the second MAPC meeting held on January 20, 2011, two representatives of the applicant were present. Neighbors in opposition were also present. Neighboring property owners made comments similar to those expressed at the first MAPC meeting. After closing the public hearing, the MAPC made a motion to approve the request that failed on a 6-6-1 vote. (January 20, 2011, MAPC Minutes attached.) Metropolitan Area Planning Commission bylaws state that a tie vote is to be counted as a denial.

The applicant has appealed the MAPCs denial to the City Council. By code, the City Council has final authority on Conditional Use applications when an appeal has been filed. (February 1, 2011 appeal letter attached.) The City Council heard the request on March 8, 2011, and unanimously voted to defer action to allow the applicant to hold additional discussions with concerned property owners.

The application area is located on the border between Council Districts IV and V. Owners of property located in District V requested that DAB V be given an opportunity to comment on the case; therefore, DAB V heard the request on March 7, 2011, and recommended denial (5-3). Interested neighbors were present to speak in opposition, citing concerns similar to those listed above. One neighborhood resident spoke in support. One of the District Advisory Board members asked if the applicant's request were to be denied, could the applicant continue to apply for a series of temporary licenses (per City Code Sec. 9.24), and, if the City would be obligated to approve those requests? As noted above, the fire chief has the discretion to approve or deny requests for temporary permits. In addition to City's ordinance regulating helicopters and helistops, the Fire Department also follows adopted National Fire Protection Association (NFPA) standards for "temporary landing sites." The NFPA defines a "Temporary Landing Site" as "A site intended to be used for a period of less than 30 consecutive days, and for no more than 10 operations per day." Unless other factors are involved, the Wichita Fire Department follows NFPA's standards regarding temporary land sites and is unlikely to issue a temporary heliport permit for the same site more frequently than one permit every thirty days and for more than 10 take-off and landing operations per day. At the DAB V meeting, the applicant indicated their contract with the helicopter operator was limited to less than eight hours of flight time per month.

Following the DAB V meeting, the applicant agreed to modified conditions of approval that, in addition to the items listed earlier, includes: helicopter operations/flights are limiting to only one Saturday per thirty days; helicopter operations/flights can occur only between the hours of 10:00 a.m. and 6:00 p.m. and the 21 acres currently developed as Mel Hambelton Ford are not eligible for temporary heliport licensing per Chapter 9.24 of the Code of the City of Wichita.

Protest petitions equaling 32.14 percent have been filed. (Protest map attached.) Protests exceeding 20 percent trigger a three-fourths majority vote by the City Council to override the neighbors' protest and approve the application.

Financial Considerations: There are not any City financial considerations associated with this application.

Goal Impact: If approved, the activity will support the City's goal to Promote Economic Vitality.

Legal Considerations: When the MAPC recommends denial, an ordinance is not included with the packet.

Recommendation/Actions: 1) Adopt the findings of the MAPC and deny the requested Conditional Use (simple majority vote required); or 2) Override the recommendation of the MAPC by adopting alternate findings found in the staff report, and approve the requested Conditional Use, subject to conditions of approval found in the staff report (three-fourths majority vote required) or 3) Return the application to the MAPC for further consideration (simple majority vote required).

Attachments: Revised site plan; December 16, 2010, MAPC Minutes; Nona Williams letter; Howard R. Moore letter; Blasi Campground letter; December 16, 2010 DWTA letter; January 25, 2011 DAB IV memo; January 20, 2011, Minutes; February 1, 2011, appeal letter and protest map.