



Wichita-Sedgwick County Metropolitan Area Planning Department

August 20, 2012

James R. and Catherine J. Marcolesco
2301 N. 219th St. West
Andale, KS, 67001

REFERENCE: CON2012-00033 – County Conditional Use for a Temporary Accessory Apartment on RR Rural Residential (“RR”) zoned property; generally located north of 21st Street North, along the west side of 219th Street West (2301 North 219th Street West). Legal Description: A tract in the Southeast Quarter of Section 1, Township 27, Range 3 West of the 6th P.M., Sedgwick County, Kansas beginning 1,325.5 feet West and 415.79 feet North of the Southeast corner of said Quarter; thence North 546.7 feet; thence West 400 feet; thence South 546.69 feet; thence East to the beginning EXCEPT the East 35 feet for road and EXCECPT the North 35 feet for road.

Dear Applicant:

At its regular meeting on August 16, 2012, the Wichita - Sedgwick County Metropolitan Area Planning Commission considered the above captioned request. The action of the MAPC was to **APPROVE** the request, subject to the following conditions:

1. The temporary accessory apartment shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC) for accessory apartments.
2. Record a restrictive covenant to be filed with the Register of Deeds that states; “At the time the applicants, James R. and Catherine G. Marcolesco, sell the subject property (insert legal) to another party, the Conditional Use for a temporary accessory apartment shall be null and void.”
3. The site will be generally developed as shown on an approved site plan, obtaining and conforming to all applicable permits, including but not limited to building, health, and zoning, including connection to water and sewer.
4. The applicants will obtain all applicable permits, including but not limited to building, health, and zoning, including connection to water and sewer
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the

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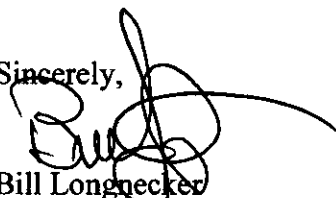
Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

Property owners may also file written protest petitions on zoning related items heard by the MAPC. In order to be considered a “valid” petition, the signatures must reflect the correct and entire ownership of the property, the property must be at least partially within 1,000 feet of the property for which the application was filed, and must be submitted to the County Clerk within 14 days of the conclusion of the MAPC hearing, by August 30, 2012, at 5 p.m. Such petitions may cause the application to be disapproved, if the land area encompassed by the protesting owners exceeds 20% of the land area within 1,000 feet of the perimeter of the application area, unless the County Commission overrides such a protest and approves the application by a vote of 4 of its members.

If there are no valid appeals or protest petitions filed opposing this action by August 30, 2012, the action of the MAPC will be considered final. If appeals or protest petitions are filed, your application will be forwarded to the September 12, 2012 County Commission meeting for review and final action.

This is a reminder that the zoning notification signs should now be removed from the property. If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,



Bill Longnecker
Senior Planner

BL:le

Copies to: BoCC 3, Karl Peterjohn, Mail Stop County, Room 320
Bob Parnacott, County Attorney, Mail Stop County Room 359
Garden Plain Township Michael J. Weber, 29601 W 13th St., N, Garden Plain, KS 67050
Bud Lett, County Code Enforcement, 1144 S Seneca, Wichita, KS, 67213
Jim Weber County Public Works, 1144 S Seneca, Wichita, KS, 67213

CONDITIONAL USE RESOLUTION NO. CON2012-00032

WHEREAS, James R. & Catherine J. Marcolesco (owners); pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requests a Conditional Use for a Temporary Accessory Apartment in the County on approximately 4.4-acres zoned RR Rural Residential ("RR"), described as:

A tract in the Southeast Quarter of Section 1, Township 27, Range 3 West of the 6th P.M., Sedgwick County, Kansas beginning 1,325.5 feet West and 415.79 feet North of the Southeast corner of said Quarter; thence North 546.7 feet; thence West 400 feet; thence South 546.69 feet; thence East to the beginning EXCEPT the East 35 feet for road and EXCECPT the North 35 feet for road, Sedgwick County, Kansas; generally located north of 21st Street North along the west side of 219th Street West (2301 N. 219th St. West).

WHEREAS, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

WHEREAS, the MAPC did, at the meeting of August 16, 2012, consider said application; and

WHEREAS, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Area Planning Commission that this application be approved to allow a Conditional Use for a Temporary Accessory Apartment in the County on approximately 4.4-acres zoned RR Rural Residential ("RR"), described as:

A tract in the Southeast Quarter of Section 1, Township 27, Range 3 West of the 6th P.M., Sedgwick County, Kansas beginning 1,325.5 feet West and 415.79 feet North of the Southeast corner of said Quarter; thence North 546.7 feet; thence West 400 feet; thence South 546.69 feet; thence East to the beginning EXCEPT the East 35 feet for road and EXCECPT the North 35 feet for road, Sedgwick County, Kansas; generally located north of 21st Street North along the west side of 219th Street West (2301 N. 219th St. West).

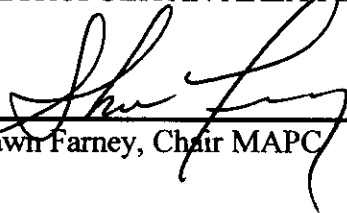
Approved subject to the following conditions:

1. The temporary accessory apartment shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC) for accessory apartments.
2. Record a restrictive covenant to be filed with the Register of Deeds that states; "At the time the applicants, James R. and Catherine G. Marcolesco, sell the subject property (insert legal) to another party, the Conditional Use for a temporary accessory apartment shall be null and void."
3. The site will be generally developed as shown on an approved site plan, obtaining and conforming to all applicable permits, including but not limited to building, health, and zoning, including connection to water and sewer.
4. The applicants will obtain all applicable permits, including but not limited to building, health, and zoning, including connection to water and sewer
5. 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

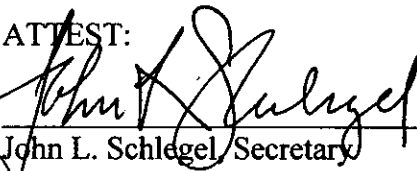
in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

Adopted this 6 day of September 2012.

METROPOLITAN AREA PLANNING COMMISSION


Shawn Farney, Chair MAPC

ATTEST:


John L. Schlegel, Secretary

STAFF REPORT

MAPC August 16, 2012

CASE NUMBER: CON2012-00032

APPLICANT/AGENT: James R. and Catherine G. Marcolesco (owner/applicants)

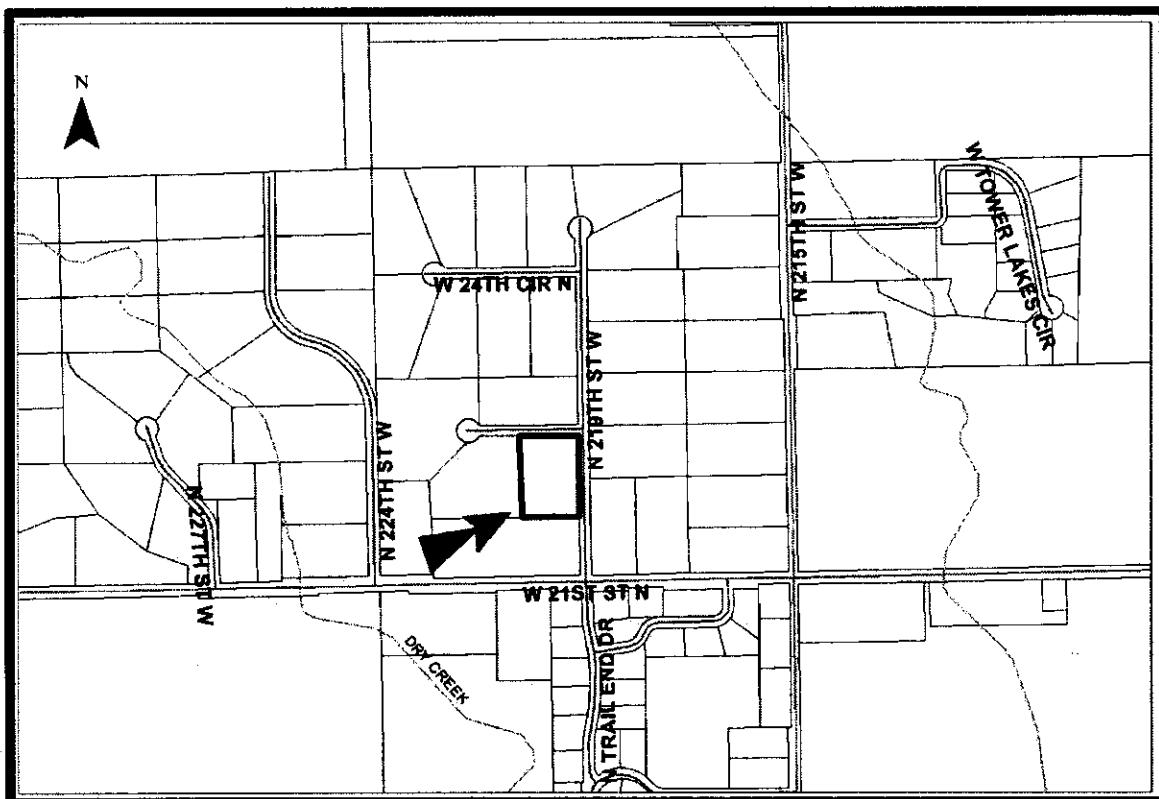
REQUEST: Conditional Use for an Accessory Apartment

CURRENT ZONING: RR Rural Residential ("RR")

SITE SIZE: 4.4-acres

LOCATION: Generally located north of 21st Street North, along the west side of 219th Street West (2301 North 219th Street West, BoCC #3)

PROPOSED USE: Use existing bath house for a second dwelling unit



BACKGROUND: The applicants are requesting a Conditional Use to allow an “accessory apartment” on a 4.4-acre RR Rural Residential (“RR”) zoned unplatted tract. The tract is located north of 21st Street North, along the west side of 219th Street West; 2301 North 219th Street West. The appraiser’s link shows the 1,923-square foot primary dwelling unit being built in 1998. The applicants have stated that they purchased the property in 2011 and that a 25-foot (x) 25-foot bath house attached to a second, detached garage was part of the site. A 2000 aerial of site shows the bath house – detached garage on the site. The bath house has a full bath, a kitchen, sleeping and living areas, which is defined as a “dwelling unit” in the Unified Zoning Code; UZC, Sec.II.B.4.j. The applicants propose to use an existing bath/pool house, as the accessory apartment to house their elderly parents. The UZC requires an approval of a Conditional Use for an accessory apartment (a second dwelling unit) in the RR zoning district; UZC Sec.III.D.

The site plan submitted by the applicant is an aerial showing the existing development on the site, which also includes a swimming pool located between the bath house and the primary single-family residence. A 2006 aerial of the site shows the pool.

Per the UZC, Sec.III.D.6.a, the Conditional Use supplemental use regulations for accessory apartments are:

- (a) A maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling.
- (b) The appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood.
- (c) The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium.
- (d) The water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

According to calls received by Planning, the site is part of a group of properties bond to a private restrictive covenant that prohibits more than one single-family residence per property. The applicants have acknowledged this and have spoken with the group about their request for an accessory apartment to house their elderly parents. Staff has not requested, received nor reviewed this covenant. Enforcement of a private restrictive covenant is a civil matter.

The site is located in a rural portion of Sedgwick County, that has a cluster of RR zoned large tract (+4-acres) single-family residences and urban scaled, platted, RR and SF-20 Single-Family Residential (“SF-20”) zoned single-family residences. These single-family residences are built on both sides of 21st Street North, with most of them located west of 219th Street West, clustered around Dry Creek. The rest are built around an un-named creek located east of 219th. The site is not abutting either creek. All of the RR zoned large tract single-family residences are located north of 21st. Most of the large tract single-family residences located around the site appear to have built in the late 1990s through the mid 2000s. Most of the urban scale RR and SF-20 zoned lots and tracts appear to have built in the mid and late 1970s. There are vacant RR and SF-20 urban scale tracts/lots. Land around this cluster of single-family residences is used for

agriculture with working farms on them.

CASE HISTORY: The RR zoned is a 4.4-acre unplatted tract with a 1,923-square foot single-family residence with a 1,613-square foot walk out basement, bath house and attached garage(s). The single-family residence was built in 1998. Staff has received calls requesting information about the request as well as support and opposition to the request. From these calls it appears the applicants are speaking with the neighborhood to reach an agreement on this proposed use.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	Large tract single-family residences, agriculture
SOUTH:	RR, SF-20	Large tract single-family residences, agriculture
EAST:	RR, SF-20	Large tract single-family residences, agriculture
WEST:	RR	Large tract single-family residences, agriculture

PUBLIC SERVICES: The existing house has a private water well and a sewage lagoon. Access to the site is off of the unpaved local residential road, 219th Street West. Less than 400 feet south of the site 219th intersects with 21st Street North, a paved two-lane County highway.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide, Map as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area to be appropriate as "Rural Areas." The purpose of this category is "to accommodate agricultural uses and rural based uses that are not more offensive than those agricultural uses commonly found in Sedgwick County." The site lies beyond all small city growth areas.

The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling's hook-up. The proposed accessory apartment is existing (2000) bath house, is built with the same style and materials as the primary single-family residence, is much smaller and similar to the other single-family residential development in the area. The proposed accessory apartment would seem to be the first in the area. The proposed accessory apartment would be served by the same private water well and sewage lagoon as the primary single-family residence. The condition of the accessory apartment being on the same water and sewer inhibits the possibility that it will not be subdivided and sold off.

An accessory apartment is typically viewed as a compatible use to a single-family residence, as long as there is enough land area and services can be provided for the additional dwelling unit. The site being a part of a group of properties bound to a private restrictive covenant that prohibits more than one single-family residence per property makes the request more problematic.

RECOMMENDATION: The existence of a private restrictive covenant that prohibits more than one single-family residence per property makes recommendation more problematic and perhaps more costly for the applicants if civil action is pursued. However, staff has typically

allowed accessory apartments unless the additional unit would impinge on the use of adjoining properties. A 2000 aerial of site shows the bath house – detached garage on the site, thus the impact on the built character the area will be minimal. Discussions between the applicants and their neighbors have presented the possibility of a compromise with certain conditions that would make the accessory apartment a temporary one. Therefore, staff recommends that a Conditional Use for a temporary accessory apartment be APPROVED subject to the following conditions:

1. The temporary accessory apartment shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC) for accessory apartments.
2. Record a restrictive covenant to be filed with the Register of Deeds that states; “At the time the applicants, James R. and Catherine G. Marcolesco, sell the subject property (insert legal) to another party, the Conditional Use for a temporary accessory apartment shall be null and void.”
3. The site will be generally developed as shown on an approved site plan, obtaining and conforming to all applicable permits, including but not limited to building, health, and zoning, including connection to water and sewer.
4. The applicants will obtain all applicable permits, including but not limited to building, health, and zoning, including connection to water and sewer
5. 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 VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located in a rural portion of Sedgwick County, that has a cluster of RR zoned large tract (+4-acres) single-family residences and urban scaled, platted, RR and SF-20 Single-Family Residential (“SF-20”) zoned single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR, which accommodates agricultural uses, low-density single-family residential development and complementary land uses. The site is developed with a single-family residence (1998), a pool and a detached garage housing a of a bath house (2000) with a full bath, a kitchen, sleeping and living areas. This is a second dwelling unit on the site, whose RR zoning allows one single-family residence per property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: An accessory apartment is typically viewed as a compatible use to a single-family residence, as long as there is enough land area and services can be provided for the additional dwelling unit. The site being a part of a group of properties bond to a private restrictive covenant that prohibits more than one single-family residence per property makes the request more problematic. The proposed accessory apartment would seem to be the first in the area.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide, Map as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area to be appropriate as "Rural Areas." The purpose of this category is "to accommodate agricultural uses and rural based uses that are not more offensive than those agricultural uses commonly found in Sedgwick County." The site lies beyond all small city growth areas.

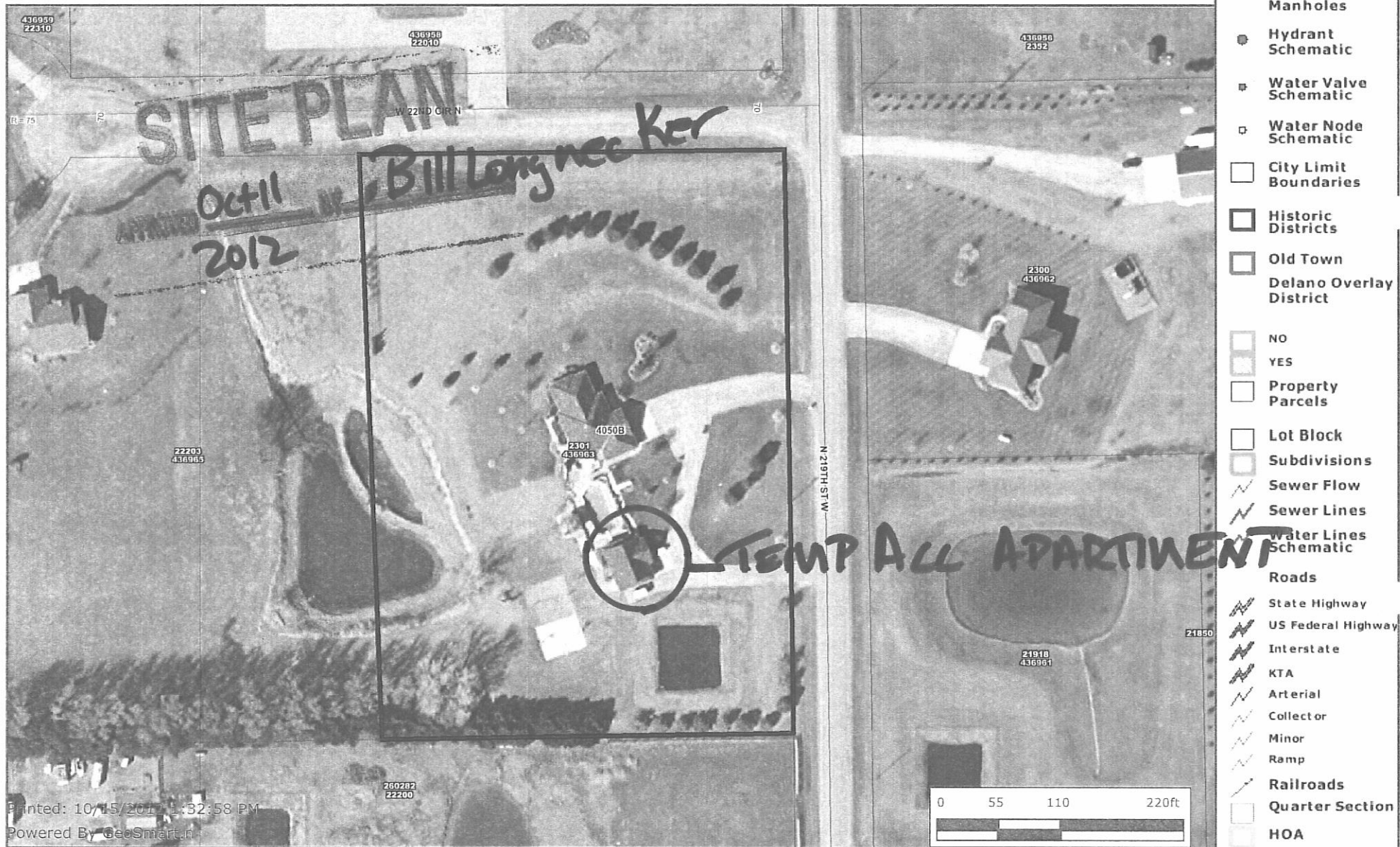
The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling's hook-up. The proposed accessory apartment is existing (2000) bath house, is built with the same style and materials as the primary single-family residence, is much smaller and similar to the other single-family residential development in the area. The proposed accessory apartment would seem to be the first in the area. The proposed accessory apartment would be served by the same private water well and sewage lagoon as the primary single-family residence. The condition of the accessory apartment being on the same water and sewer inhibits the possibility that it will not be subdivided and sold off.

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5. Impact of the proposed development on community facilities: If developed in compliance with the recommended conditions of approval (single water well connected to both dwellings, single sewage lagoon connected to both dwellings), then it should not have any impact on community facilities.

CON2012-33 - Temporary Accessory Apartment

Exhibit for Restrictive Covenant



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