CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

November 5, 2013

Robert Kaplan
301 N. Main Street, Ste. 1600
Wichita, KS 67202

Theodore W. Maisch, Sr.
1940 South Oliver
Wichita, KS 67218

RE: **CON2013-00017 – City Conditional Use to permit a nightclub in the city on property located south of East Lincoln Street and east of South Ida Avenue (1111 East Lincoln Street).**

Dear Ladies and Gentlemen:

At its regular meeting on **November 5, 2013**, the Wichita City Council (WCC) considered the above captioned request. The action of the WCC was to **approve** the request subject to the following conditions:

A. No outside loudspeakers or outdoor entertainment are permitted without conditional use approval.
B. 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 the Unified Zoning Code, may, with the concurrence of the planning director, declare that the conditional use is null and void.

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

Sincerely,

Dale Miller

Dale Miller
Current Plans Manager
Current Plans Division

Copies to: WCC I, Lavonta Williams, Mail Stop 1-13
NA I, Megan Buckmaster, Mail Stop 1-135
Tom Stolz, OCI, Mailstop 1-72
Paul Hays, OCI, Mailstop 1-72
J. R. Cox, OCI, Mailstop 1-72

RESOLUTION No. _____

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO PERMIT A NIGHT CLUB ON APPROXIMATELY 0.38-ACRE ZONED LC LIMITED COMMERCIAL (LC), GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF EAST LINCOLN STREET AND SOUTH IDA AVENUE, 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. 44-975 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, for a Conditional Use to allow a Night Club, on approximately 0.38-acre zoned LC Limited Commercial (LC) legally described below:

Case No. CON2013-00017

A Conditional Use to allow a "nightclub in the city," on approximately 0.38-acre zoned LC Limited Commercial (LC) described as:

The east 50 feet of Lots 2 and 4, Ida Avenue, Lincoln Street Addition to Wichita, AND Lots 2 and 4 except the east 50 feet, Ida Avenue and Lots 10 and 12, Ida Avenue and Lots 1, 3, 5, 7, 9 and 11 Laura Avenue, Lincoln Street Addition and Lots 6 and 8, Ida Avenue, Lincoln Street Addition, all in Wichita, Sedgwick County, Kansas; generally located southeast of the intersection of East Lincoln Street and South Ida Avenue (1111 East Lincoln Street).

SUBJECT TO THE FOLLOWING CONDITIONS:

(1) No outside loudspeakers or outdoor entertainment is permitted without Conditional Use approval.
(2) 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 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.

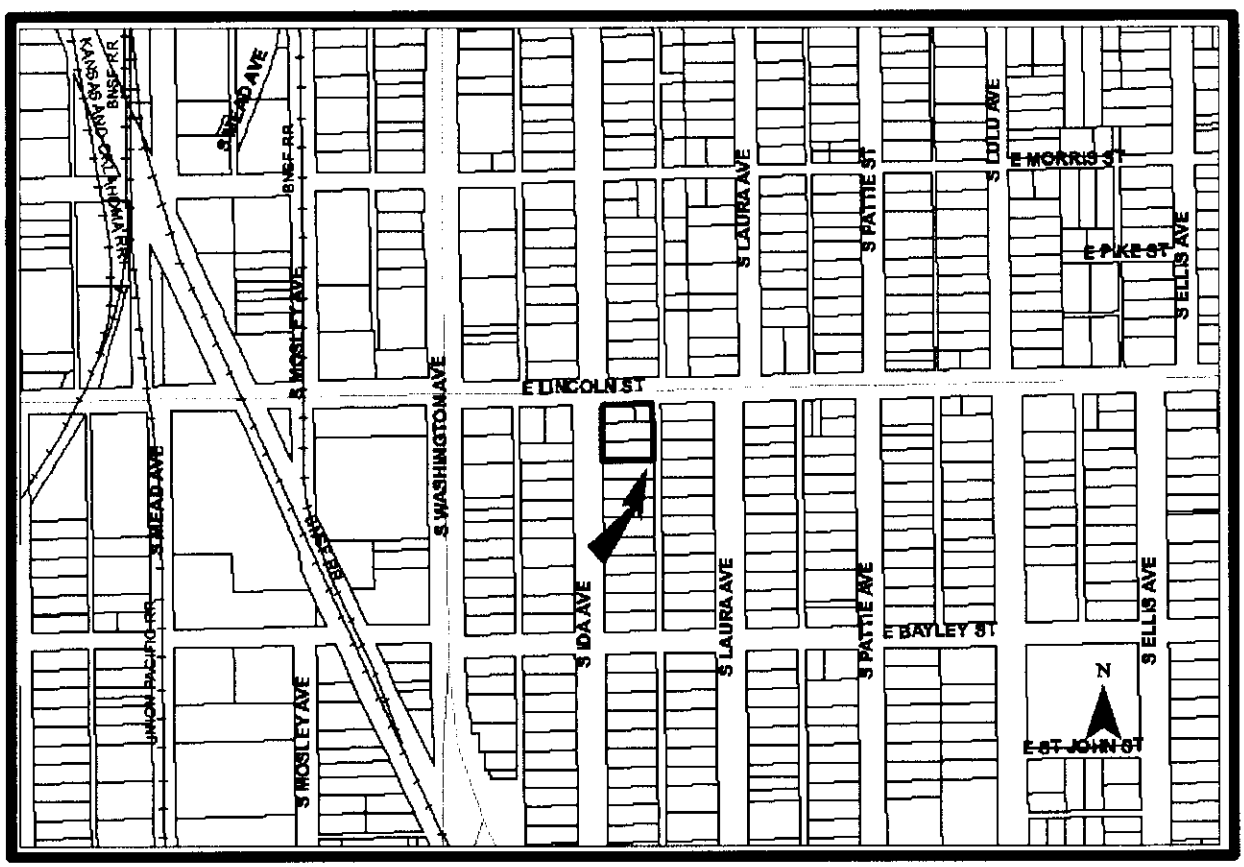
SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

WICHITA–SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM NO. 8

STAFF REPORT
DAB I 9-9-13
MAPC 9-12-13

CASE NUMBER:	CON2013-00017
APPLICANT/AGENT:	Theodore W. Maisch, Sr., for Irr. Marital Trust and Maisch Family Limited Partnership / Robert W. Kaplan of Klenda Austerman, LLC
REQUEST:	Conditional Use to permit a Nightclub in the City
CURRENT ZONING:	LC Limited Commercial
SITE SIZE:	21,000 square feet
LOCATION:	South of East Lincoln, east of South Ida (east of South Washington Avenue)
PROPOSED USE:	Nightclub in the City



BACKGROUND: The application area, 1103 and 1111 East Lincoln Street, is located at the southeast corner of East Lincoln Street and South Ida Avenue, and is zoned LC Limited Commercial (LC). Located on the site are two small commercial building. One building, addressed as 1103 East Lincoln Street, is located on the northwest corner, and is a retail liquor store. The second building, addressed as 1111 East Lincoln Street, is located at the northeast corner of the site, and was, up until July 28, 2011, used as "drinking establishment restaurant" (DER) with an Entertainment Establishment (EE) license that permitted live entertainment, but not dancing. The applicant wishes to reopen or convert the building at 1111 East Lincoln from a DER and Entertainment Establishment to a "Nightclub in the City."

Nightclub in the City is defined by the "Wichita-Sedgwick County Unified Zoning Code" (UZC) as "...an Entertainment Established located in the City that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor are offered, consumed or served to the public or its members, and which may or may not serve food. When the Nightclub in the City qualifies as an "Adult Entertainment Establishment" under Chapter 3.05 of the Code of the City of Wichita, its Uses shall be governed in this Code by the requirements for "Sexually Oriented Businesses in the City."

The UZC permits a Nightclub in the City in the LC zoning district subject to Article III, Section III-D.6.w that states that a Nightclub in the City is permitted by-right in the LC zoning district unless the property on which the proposed Nightclub in the City is situated within 300 feet of a church, public park, public or parochial school or residential zoning district. If the property proposed for a Nightclub in the City is located within 300 feet of the uses described above, a Conditional Use shall be required.

The subject property abuts MF-29 Multi-family Residential (MF-29) zoned property immediately to the south, and is adjacent to other MF-29 zoned property located to the southwest, across Ida Avenue, and southeast, across the alley located immediately east of the subject site. Surrounding properties are primarily zoned LC; however, there are lots zoned MF-29 located to the south, southeast and southwest. Surrounding properties are developed with a mix of vehicle repair, retail sales and single-family residences. Lincoln Street is classified as an "arterial" street.

In 2011, 1111 East Lincoln, the address of the structure proposed for the nightclub, had a maximum occupancy of 105 persons. The UZC requires one parking space per two occupants for a Nightclub in the City, resulting in a total on-site parking requirement of 53 spaces. The application area contains a total of 32 spaces. 1103 East Lincoln, the address of the retail liquor store, has approximately 500 square feet, which results in an off-street parking requirement of two spaces, leaving the total application area's remaining 30 spaces for the proposed nightclub; however, if the proposed nightclub is too have the same occupancy as the previous DER, the site is short 23 parking spaces. However, the site's parking situation is addressed by UZC Article III, Section III-E.1.a and b that permit a nonconformity such as lack of off-street parking to continue so long as there is not an increase on the premises of more than 30 percent floor area or 50 percent value and there is not a change is use to a more intensive use. Past use of 1111 East Lincoln as a DER with an entertainment establishment license for live entertainment is equivalent to current definition that the service of alcohol plus live entertainment or dancing equals a Nightclub in the City. Therefore, the requested Conditional Use does not constitute an intensification of use on the site.

CASE HISTORY: The site's existing LC zoning appears to have been established in 1921 with the adoption of the City's first zoning map.

ADJACENT ZONING AND LAND USE:

North: LC; single-family residence, vehicle repair
South: MF-29; single-family residences
East: LC; single-family residence
West: LC; retail/commercial

PUBLIC SERVICES: East Lincoln Street is classified as an arterial street, and has approximately 68-feet of right-of-way. The location is in an area of Wichita that has been developed and served by municipal utilities and services for many years.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts the site as being appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, with the following conditions:

(1) No outside loudspeakers or outdoor entertainment is permitted without Conditional Use approval.
(2) 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 the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is located along East Lincoln, an arterial street that is zoned with either LC or General Commercial (GC) zoning for one block west to Washington Avenue and three blocks east to Lulu Avenue. Some of these properties are development with single-family residences; however, many are developed with commercial or retail, office, office-warehouse, vehicle repair and sales uses.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC and has been the site of a DER with an entertainment establishment license. Under the current code and licensing requirements a DER with an entertainment establishment is classified as a Nightclub in the City. LC zoning permits a wide range of uses; however, the structure at 1111 East Lincoln is fairly small and probably is not too attractive to LC uses.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is zoned LC and has been the site of a DER with an entertainment establishment license. Under the current code and licensing requirements a DER with an entertainment establishment is classified

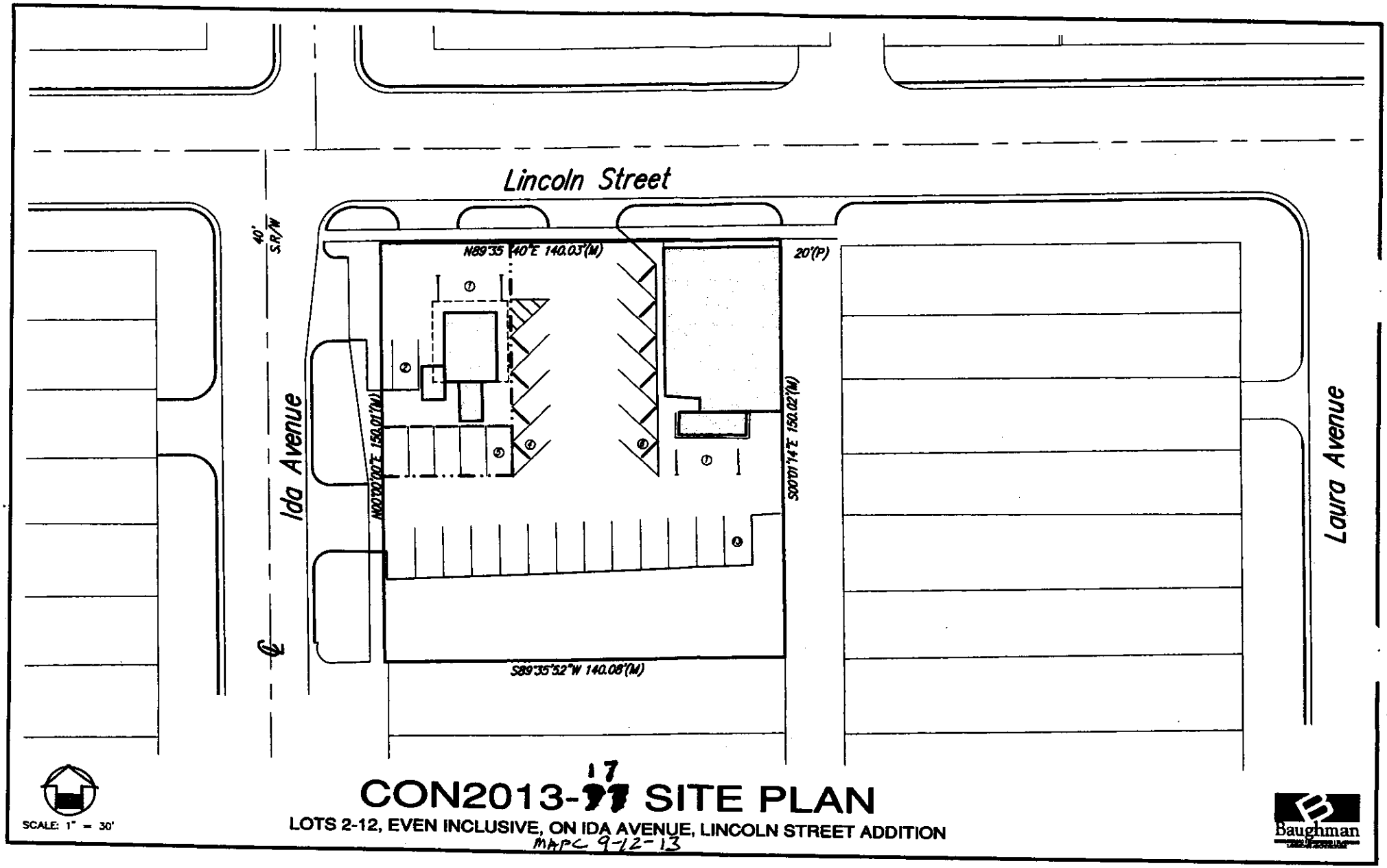
as a Nightclub in the City; therefore, the request does not add a use that has not been previously permitted.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would presumably be an economic hardship upon the property owner since he apparently has a prospective nightclub tenant.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts the site as being appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

   The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

6. Impact of the proposed development on community facilities: The location is in an area of Wichita that has been developed and served by municipal utilities and services for many years. The proposed Conditional Use should not impact community facilities to any greater extent than past uses on the property.



CON2013-17 SITE PLAN

LOTS 2-12, EVEN INCLUSIVE, ON IDA AVENUE, LINCOLN STREET ADDITION

MAPC 9-12-13

Baughman

SITE PLAN

APPROVED 11-5-13 BY