

**City of Wichita
City Council Meeting
March 7, 2006**

Agenda Report No. _____

TO: Mayor and City Council

SUBJECT: CUP2005-00072 Associated with (ZON2005-00054) – Creation of DP-293 E.S. Development Midwest Commercial Community Unit Plan; zone change to “LC” Limited Commercial. Generally located east of Maize Road, approximately 1/4 mile north of 21st Street North. (District V)

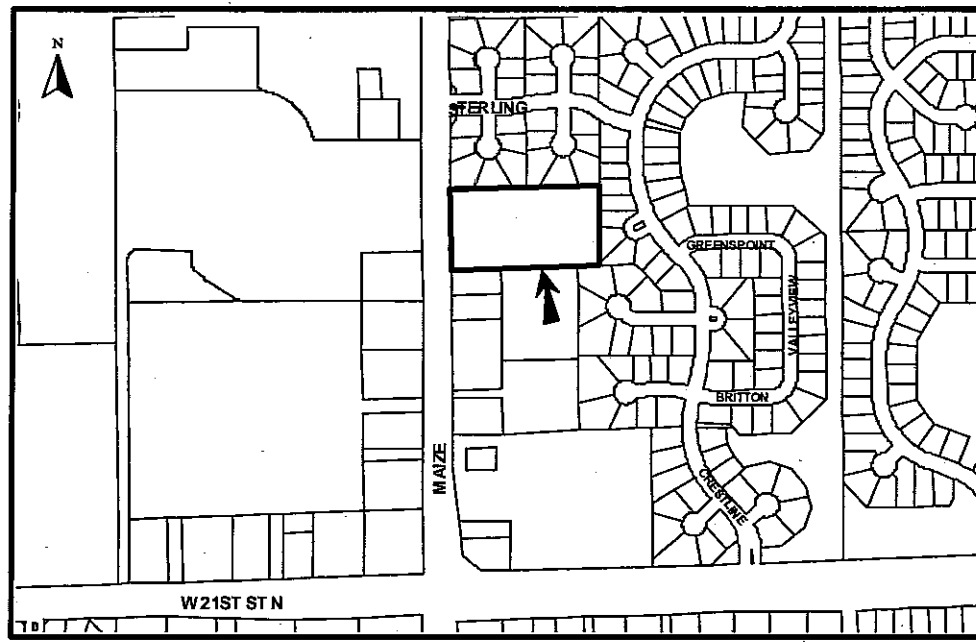
INITIATED BY: Metropolitan Area Planning Department *JLS*

AGENDA: Planning (Non-Consent)

MAPC Recommendation: Approve, subject to revised conditions, vote (11-1).

MAPD Staff Recommendations: Approve, subject to conditions.

DAB Recommendations: DAB V approve subject to conditions, vote (8-1).



Background: The applicant proposes to create a commercial Community Unit Plan containing approximately 4.54 acres located east of Maize Road, approximately ¼ mile north of 21st Street North and rezone the property from "SF-5" Single-family Residential to "LC" Limited Commercial. The CUP anticipates cross lot circulation with DP-204 Chadsworth Commercial CUP (see General Provision 23). The proposed CUP would be designed to tie together with this commercial development.

After several public meetings, the applicant/agent has agreed to modify some of the original provisions of the CUP to reduce the impact of development on the residences to the north and east. The revised conditions are included in the background discussion that follows.

The CUP has one parcel, which would permit only uses considered more compatible in close proximity to residential than normally found on an "LC" zoned tract. Permitted uses would be the following:

Residential: single-family; duplex; assisted living;

Public and civic: church or place of worship; college or university; community assembly; convalescent care facility; day care; government service; group home; hospital; library; parks and recreation; safety service; school; utility, minor;

Commercial: ATM; bank or financial institution; broadcast/recording studio; funeral home; medical service; office, general; parking area, commercial; personal care service; personal improvement service; post office substation; printing and copying, limited; recreation and entertainment, indoor; restaurant; retail, general; vocational school; wireless communication facility; storage, outdoor.

The list of prohibited uses would be: adult entertainment establishment; sexually oriented business; asphalt/concrete plant; private club; tavern, drinking establishment; multi-family; accessory apartment; group residence; neighborhood swimming pool; cemetery; correctional placement residence; golf course; recycling collection station; reverse vending machine utility, major; animal care; bed and breakfast inn; car wash; construction sales and services; convenience store; heliport; hotel or motel; kennel; marine facility; monument sales; night club in the City; parking area, nursery and garden center; commercial; pawn shop; printing and publishing, general; recreation and entertainment, outdoor; recreational vehicle campground; secondhand store; service station; vehicle and equipment sales, outdoor; vehicle repair, limited; wireless communication facility; manufacturing, limited; mining or quarrying; oil or gas drilling; rock crushing; solid waste incinerator; agricultural research; agricultural sales and service. Conditional uses in "LC" would require a CUP amendment approval in lieu of Conditional Use approval prior to being permitted.

The applicant agreed to prohibit restaurants with drive-in service or drive-through service on the northern 150 feet of the CUP. Quick-service or fast-food drive-in service and/or order boards would be prohibited on the eastern 300 feet, but drive-in service for other types of restaurants and retail uses would be allowed on the eastern 300 feet not within the northern 150 feet of the CUP. The southwest corner of the tract would allow order boards, but using noise mitigation techniques including sound dampening boards, partitions and/or evergreen materials and not allowing speakers directed in a northerly direction. The applicant also offered to restrict trash pick-up to after 8 a.m. daily.

Buildings would have uniform architectural compatibility of character, color, texture and materials, and would use earth-tone colors predominately, with metal not used as a predominant exterior material or used on facades above the screening wall adjoining residential zoning except as trim. Parking lots would have similar or consistent lighting elements, and be limited to 15 feet in height within 100 feet of residential zoning and 24 feet otherwise. Maximum building coverage would be 30 percent and maximum gross floor area would be 35 percent. Maximum building height would be 35 feet. This is the same height allowed in the adjoining residential zoning district. The proposed number of buildings would be four.

Ground signage would be monument type signs with a maximum height of 20 feet and a total sign area of 264 square feet spaced a minimum of 150 feet apart and no sign allowed within 70 feet of the northern property line. Portable and off-site signs are prohibited. Window displays would be limited to 25% of window area and signs on the rear would be prohibited. Moving signs except time and temperature or public service message are prohibited.

An eight-foot concrete/masonry screening wall would be constructed on the north, east and south property line adjacent to residential zoning. The setback proposed on the CUP would be 100 feet on the east property line to afford greater separation for the abutting residential dwellings. The setback would be 50 feet for the western 300 feet and 70 feet for the eastern 300 feet along the northern property line. Additionally, a row of solid evergreen screening would be provided.

The property currently is zoned "SF-5" and developed with a church, which would be razed. The property to the east, north and eastern 100 feet on the south is zoned "SF-5" Single-family Residential and developed with single-family dwellings in the Chadsworth Subdivision. The property to the south (except for the eastern 100 feet of the southern property line), and to the west across Maize Road is zoned "LC" and developed with a wide range of commercial uses, including sit-down restaurants, drive-through restaurants, small multi-tenant commercial buildings, banks, auto repair, large grocery store (Dillons), Wal-Mart and the main NewMarket Square Shopping Center.

Analysis: At the MAPC meeting held January 5, 2006, MAPC voted (6-5) to defer the case until the District V Advisory Board considered the case. Many neighbors spoke in opposition, citing concerns with noise, trash, odors, that the loss of the church and its playground would diminish the quality of life for abutting neighbors, already having too much commercial on Maize Road, traffic, safety of traffic circulating in the parking lots already in the vicinity and lights.

At the District V Advisory Board meeting held January 9, 2006, DAB voted (4-3) to defer the case until February 6, 2006. A representative of the church spoke and said they had done market research and found the property too valuable to not sell for development and that they had planned for a building expansion, but space was inadequate. Many neighbors spoke in opposition, citing concerns similar to those heard at the MAPC on January 5, 2006, including noise, odors and trash especially from drive-in restaurants, trash pick-up during the night, lack of code enforcement for containing trash at existing commercial uses, particularly the bowling alley, potential loss of resale value of residential houses, drainage and traffic increases.

At the MAPC meeting held January 19, 2006, MAPC voted (11-1) to approve subject to revised conditions of the CUP as discussed in the background section. Again, many neighbors spoke in opposition.

At the DAB V meeting held February 6, 2006, the DAB voted (8-1) to approve subject to the revised conditions recommended by MAPC. Many citizens again spoke in strong opposition citing factors of making drainage worse, traffic increases when it is already difficult to access Maize Road, trash, noise, odor and a lack of enforcement of requirements on existing CUPs. One neighbor spoke in support of the church's proposal.

Legal protests have been received from 43.45 percent of the property owners within 200 feet of the property. Additional non-binding protests and other letters of opposition have been received. A three-fourth vote of the entire governing body is required to approve the request because the official protest exceeds 20 percent.

Financial Considerations: None

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change subject to replatting within one year and approve the CUP; instruct the Planning Department to forward the ordinance for first reading when the plat is forwarded to City Council (requires three-fourth vote of entire governing body to approve); or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)