Agenda Item #_____

City of Wichita
City Council Meeting
May 7, 2002

Agenda Report #_____

TO: Mayor and City Council Members

SUBJECT: **ZON2002-00010 – Zone change from "NR" Neighborhood Retail to "LC" Limited Commercial and amendment of Protective Overlay #41. (District II)**

INITIATED BY: Metropolitan Area Planning Department

MK

AGENDA ACTION: Planning

MAPC Recommendation: Approve, subject to staff recommendations. (11-1)

Staff Recommendation: Approve, subject to conditions.

BACKGROUND: The applicant requests a zone change from "NR" Neighborhood Retail to "LC" Limited Commercial on Lot 2, Calliendo 11th Addition. The applicant also requests an amendment of PO (Protective Overlay) #41 on Lots 1 and 2, Calliendo 11th Addition. The purpose of both requests is to allow uses permitted in the "LC" Limited Commercial district.

In 1998, the applicant rezoned Lot 1 from "GO" to "NR", and rezoned Lot 2 from "GO" to "LC". A condition of the 1998 rezoning was PO #41, which reads as follows:

1. Complete access control to Webb Road shall be maintained except for the north 60 feet of Lot 2, and the south 60 feet of Lot 1.
2. The owner of Lot 1 shall allow access between his driveway opening and the lot abutting to the south of Lot 1.
3. The owner of Lot 2 shall allow access between his driveway and the lot abutting to the north of Lot 2.
4. The south 57.5 feet of Lot 2 shall be limited to those uses and signs permitted on properties zoned "NR" Neighborhood Retail district.

The applicant indicates that he has tried to market the "NR" zoned Lot 1 unsuccessfully since the 1998 rezoning, he feels that this property would be marketable if zoned "LC". Likewise, the applicant feels that Lot 2 would be marketable if PO # 41 item 4 were removed. Along with his application, the applicant submitted three letters from neighboring property owners, all within the official notification area (see attached). Letters from these three neighbors indicated support of the requested zone change from "NR" to "LC".

The 2.03-acre application area is currently vacant. Property to the north is zoned "GO" and developed with a single family residence, further north is the "LC" zoned and commercially developed Harry and Webb intersection. South of the application area is an "SF-5" zoned single-family residence, further south are "TF-3" zoned two-family residences. East of the application area, across Webb, is an "SF-5" zoned single-family residence, and an "SF-5" zoned church. West of the application area are "TF-3" zoned two-family residences, and "GO" zoned property developed with offices.

A change from "NR" to "LC" zoning at this location, to include removal of PO #41 item 4, would permit additional and more intense uses. Examples of these more intense uses would include restaurants with drive through windows, convenience stores, nurseries and garden centers, pawn shops, night clubs, car washes as a conditional use, and others. Commercial development at this location, whether under "NR" or "LC" zoning, would require conformance to all development standards of the Unified Zoning Code, to include compatibility setbacks from residential neighbors, screening, and compliance with the Landscape Ordinance.

The "Wichita Land Use Guide" identifies the application area as "Commercial". Likewise, the application area meets the "Commercial Locational Guidelines" of the Plan. Staff feels that PO #41 could be amended to allow "LC" zoned uses on the application area, but still control vehicular traffic access, and protect the residential

neighbors from excessive commercial signage and noise.

MAPC heard this request at their regularly scheduled hearing on April 4th, 2002. One neighbor spoke in opposition of the zone change request; the neighbor lives in a two-family dwelling abutting the application area to the west. The neighbor stated her concern with potential noise from drive through restaurant speakers near her property, and the potential nuisance of restaurant trash dumpsters near her property. Neither the applicant nor his agent were present at the MAPC hearing. MAPC voted 11-1 to approve the zone change request, and to amend PO#41 as recommended by staff to read:

1. Complete access control to Webb Road shall be maintained except for the north 60 feet of Lot 2, and the south 60 feet of Lot 1.
2. The owner of Lot 1 shall allow access between his driveway opening and the lot abutting to the south of Lot 1, should that property be rezoned to a non-residential district.
3. The owner of Lot 2 shall allow access between his driveway and the lot abutting to the north of Lot 2.
4. The owners of lots 1 and 2 shall allow cross access between the two lots.
5. No portable or off-site signs shall be allowed on Lot 1 or 2.

Planning staff received one letter in protest of the zone change and PO amendment request (see attached). Staff also received six protest petitions, four of which were within the protest area, accounting for 19.54 percent of the protest area. The protesting percentage is just under 20 percent, which would require an overriding supermajority vote by the City Council. All of the protest petitions mention noise associated with restaurant drive through windows as a concern; in addition, several protest petitions state concern over long hours of operation, traffic, and dumpsters (see attached). The applicant and his agent have since worked with staff to address the issue of drive through speakers. The applicant has agreed to support an additional PO#41 item which would state:

"Speakers associated with drive-up windows shall be directed away from any residential zoned district and shall be a minimum of 50 feet from any residential zoned district."

Recommended action:

1. Concur with the findings of the MAPC and approve the zone change and PO#41 amendment to read:

1. Complete access control to Webb Road shall be maintained except for the north 60 feet of Lot 2, and the south 60 feet of Lot 1.
2. The owner of Lot 1 shall allow access between his driveway opening and the lot abutting to the south of Lot 1, should that property be rezoned to a non-residential district.
3. The owner of Lot 2 shall allow access between his driveway and the lot abutting to the north of Lot 2.
4. The owners of lots 1 and 2 shall allow cross access between the two lots.

5. No portable or off-site signs shall be allowed on Lot 1 or 2.
6. Speakers associated with drive-up windows shall be directed away from any residential zoned district and shall be a minimum of 50 feet from any residential zoned district.

Place the ordinance establishing the zone change and PO#41 amendment on first reading; or

2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a 2/3rd majority vote of the membership of the governing body on the first hearing.)

Dup original

First Published in The Wichita Eagle on 5-18-02
Corr + Rep 6-28-02
ORDINANCE NO. 45-313

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2002-00010

Request for zone change from "NR" Neighborhood Retail to "LC" Limited Commercial and amendment to "P-O" **Protective Overlay District #41**, on property described as:

Lots 1 and 2, Caliendo 11th Addition, Wichita, Sedgwick County, Kansas. Generally located approximately 1100 feet south of Harry and west of Webb Road.

SUBJECT TO THE FOLLOWING AMENDED PROTECTIVE OVERLAY RESTRICTIONS:

1. Complete access control to Webb Road shall be maintained except for the north 60 feet of Lot 2, and the south 60 feet of Lot 1.
2. The owner of Lot 1 shall allow access between his driveway opening and the lot abutting to the south of Lot 1, should that property be rezoned to a non-residential district.
3. The owner of Lot 2 shall allow access between his driveway and the lot abutting to the north of Lot 2.
4. The owners of lots 1 and 2 shall allow cross access between the two lots.
5. No portable or off-site signs shall be allowed on Lot 1 or 2.
6. Speakers associated with drive-up windows shall be directed away from any residential zoned district and shall be a minimum of 50 feet from any residential zoned district.
7. Buffer trees shall be planted along the west line of the lots where abutting residential zoning at a density of at least 1.5 times the minimum standard in the City Landscape Ordinance.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED AT WICHITA, KANSAS, 5-14-02

ATTEST:

for Pat Burnett, City Clerk — Patsy Ellis, Deputy

Bob Knight, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, City Attorney

WICHITA–SEDGWICK COUNTY
W-SC
METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM No. 8

STAFF REPORT

MAPC 4/4/02

CASE NUMBER:	ZON2002-00010
APPLICANT:	Jeff W. Bannon (owner); Gary Wiley, PEC, P.A. (agent)
REQUEST:	Zone change from "NR" Neighborhood Retail to "LC" Limited Commercial and amendment of Protective Overlay #41
CURRENT ZONING:	"NR" Neighborhood Retail
SITE SIZE:	zone change on .64 acre site, amendment of Protective Overlay #41 on 2.03 acre site
LOCATION:	approximately 1100 feet south of Harry and west of Webb Road
PROPOSED USE:	uses permitted in the "LC" Limited Commerical district

BACKGROUND: The applicant requests a zone change from "NR" Neighborhood Retail to "LC" Limited Commercial on Lot 2, Calliendo 11th Addition. The applicant also requests an amendment of PO (Protective Overlay) #41 on Lots 1 and 2, Calliendo 11th Addition. The purpose of both requests is to allow uses permitted in the "LC" Limited Commercial district.

In 1998, the applicant rezoned Lot 1 from "GO" to "NR", and rezoned Lot 2 from "GO" to "LC". A condition of the 1998 rezoning was PO #41, which reads as follows:

1. Complete access control to Webb Road shall be maintained except for the north 60 feet of Lot 2, and the south 60 feet of Lot 1.
2. The owner of Lot 1 shall allow access between his driveway opening and the lot abutting to the south of Lot 1.
3. The owner of Lot 2 shall allow access between his driveway and the lot abutting to the north of Lot 2.
4. The south 57.5 feet of Lot 2 shall be limited to those uses and signs permitted on properties zoned "NR" Neighborhood Retail district.

The applicant indicates that he has tried to market the "NR" zoned Lot 1 unsuccessfully since the 1998 rezoning, he feels that this property would be marketable if zoned "LC". Likewise, the applicant feels that Lot 2 would be marketable if PO # 41 item 4 were removed.

The .64-acre zone change application area, and the 1.49-acre site adjoining to the north are both vacant. Property to the north is zoned "GO" and developed with a single family residence, further north is the "LC" zoned and commercially developed Harry and Webb intersection. South of the application area is an "SF-5" zoned single-family residence, further south are "TF-3" zoned two-family residences. East of the application area, across Webb, is an "SF-5" zoned single-family residence, and an "SF-5" zoned church. West of the application area are "TF-3" zoned two-family residences, and "GO" zoned property developed with offices.

A change from "NR" to "LC" zoning at this location, to include removal of PO #41 item 4, would permit additional and more intense uses. Examples of these more intense uses would include restaurants with drive through windows, convenience stores, nurseries and garden centers, pawn shops, night clubs, car washes as a conditional use, and others. Commercial development at this location, whether under "NR" or "LC" zoning, would require conformance to all development standards of the Unified Zoning Code, to include compatibility setbacks from residential neighbors, screening, and compliance with the Landscape Ordinance.

CASE HISTORY: The application area was rezoned from "GO" to "NR" and

"LC" in August of 1998, a condition of that zone change was PO #41, mentioned above. The 1998 zone change case also removed a previously existing restrictive covenant, which restricted uses on the site to those permitted in the "BB" Office district and a car wash.

ADJACENT ZONING AND LAND USE:

NORTH:	"GO" and "LC", single-family residence and commercial uses
SOUTH:	"TF-3" and "SF-5", single and two-family residences
EAST:	"SF-5", single-family residence, church
WEST:	"GO" and "TF-3", office uses and two-family residences

PUBLIC SERVICES: All normal public services are available. Webb Road is a section line road with a 100-foot right of way; Webb was recently improved to four lanes at this location. This section of Webb Road had a March 2001 traffic count of 10,275 ADTs (average daily trips) and a 2030 traffic count projection of 12,176 ADTs.

CONFORMANCE TO PLANS/POLICIES: The updated "Wichita Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies the application area as "Commercial".

RECOMMENDATION: The "Wichita Land Use Guide" identifies the application area as "Commercial". Likewise, the application area meets the "Commercial Locational Guidelines" of the Plan. Staff feels that PO #41 could be amended to allow "LC" zoned uses on the application area, but still control vehicular traffic access, and protect the residential neighbors from excessive commercial signage. Based upon information available prior to the public hearing, planning staff recommends that the zone change request, from "NR" to "LC" be APPROVED; also, based upon information available prior to the public hearing, planning staff recommends that PO #41 be amended to read:

1. Complete access control to Webb Road shall be maintained except for the north 60 feet of Lot 2, and the south 60 feet of Lot 1.
2. The owner of Lot 1 shall allow access between his driveway opening and the lot abutting to the south of Lot 1, should that property be rezoned to a non-residential district.
3. The owner of Lot 2 shall allow access between his driveway and the lot abutting to the north of Lot 2.
4. The owners of lots 1 and 2 shall allow cross access between the two lots.
5. No portable or off-site signs shall be allowed on Lot 1 or 2.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The neighborhood surrounding the application area is a mixture of non-residential and commercial uses fronting Webb Road, and office and residential uses on collector and residential streets. The arterial streets at this location are in transition from some previous residential uses to commercial uses, as indicated by the new Dillon's and Walgreen's at the Webb/Harry intersection.

2. The suitability of the subject property for the uses to which it has been restricted. The property could be developed as zoned and restricted to "NR" uses. However, the applicant indicates an inability to market the property as currently zoned and restricted.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed zone change would permit development which could result in increased traffic, and more intense uses. The proposed PO amendment would continue to control traffic access, and would control the impact of signage on residential neighbors. Also, development standards of setbacks, screening, and landscaping should mitigate any negative impacts of "LC" permitted development on the residential neighbors.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The requested change is in conformance with the "Wichita Land Use Guide" and "Commercial Locational Guidelines" of the Plan.

5. Impact of the proposed development on community facilities: An increase in traffic at this location could occur as a result of "LC" uses at the application area. Webb Road can easily accommodate the anticipated increase in traffic. Likewise, the proposed PO #41 should mitigate negative impacts by controlling the access of traffic at the application area.