



FILE COPY

Wichita-Sedgwick County Metropolitan Area Planning Department

December 27, 2004

Tegra Healthcare Properties
90 South 400 West, Suite 200
Salt Lake City, UT 84101

RE: BZA2004-00070 – Appeal of an administrative interpretation to a CUP (DP-106) by the Zoning Administrator dated August 15, 2004, pertaining to an emergency room proposed for DP-106, Northwest Village Community Unit Plan. Generally located at the northeast corner of 13th Street North and Tyler Road. (District V)

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **December 14, 2004**. This resolution reflects the official action of the Board. It is forwarded to you for your information and files.

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

Sincerely,

Scott Knebel
Senior Planner

SK/rms

Cc: Patrick Hughes, Adams & Jones, 155 N. Market, Suite 600, P O Box 1034,
Wichita, KS 67201-1034
Gary Oborny, Occidental Management, 300 N. Main, Ste. 201, Wichita, KS 67202
Steve Crain, Occidental Management, 300 N. Main, Ste. 201, Wichita, KS 67202
Alan Meiers, Occidental Management, 300 N. Main, Ste. 201, Wichita, KS 67202
Northwest Center, LLC, Property Owner, 300 N. Main, Ste 201, Wichita, KS 67202
Roger Sherwood, Sherwood & Harper, Riverfront Place, 833 N. Waco, P O Box 830,
Wichita, KS 67201

Kurt Harper, Sherwood & Harper, Riverfront Place, 833 N. Waco, P O Box 830,
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Peter Bohling, Supermarket Developers, P O Box 2932, Kansas City, KS 66110-1192

Matt Jensen, Tegra Healthcare Properties, 90 South 400 West Ste 200,
Salt Lake, UT 84101

Lynn Summerhays, Tegra Healthcare Properties, 90 South 400 West Ste 200,
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David Busatti, Wesley Medical Center, 550 N. Hillside, Wichita, KS 67214

G. B. (Sam) Serrill, Wesley Medical Center, 550 N. Hillside, Wichita, KS 67214

Francie Ekengren, Wesley Medical Center, 550 N. Hillside, Wichita, KS 67214

Bob Martz, WCC, District V, Mail Stop 1-13

Sharon Dickgrafe, Law Department, Mail Stop 1-132

Joe Lang, Law Department, Mail Stop 1-132

Kurt Schroeder, OCI, Mail Stop, 1-72

Herb Shaner, OCI, 1-72

BZA RESOLUTION NO. 2004-00070

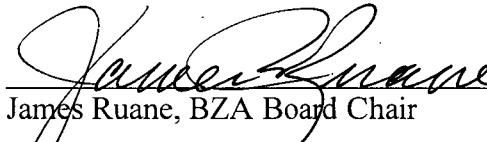
HAVING CONSIDERED THE ENTIRE RECORD REGARDING THIS MATTER AND HAVING HEARD THE EVIDENCE AS PRESENTED TO THE BOARD HERE TODAY, THE BOARD MAKES THE FOLLOWING FINDINGS:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d) and Section 2.12.590 of the Code of the City of Wichita, Kansas.
2. That the Board makes the following of fact:
 - a) That Community Unit Plan zoning and the adoption of a plan such as this is in fact a great use of private property rights rather than a taking by the Zoning Board or Zoning authorities in that it allows the developers and owners of the property to come together and cooperatively map out uses for their property for their mutual benefit and hopefully to add value in the future to their property.
 - b) We must interpret any reference to Zoning Code to mean the Code then in effect. Because although the Code might be subsequently amended or revised we certainly must understand that those parties entering into this contract, per zoning or contract, by which they agree to these restrictions are clearly referring to and understanding the Zoning Code as it existed at that time. You can't see into the future and anticipate further and future revisions to the Code.
 - c) Given the 1985 change that took place to this Zoning Code, we find that Mr. Schroeder's interpretation is quite reasonable, especially because Parcel 4 was being combined with another Parcel and the only limit to the CUP were those as specified particularly, and that the uses permitted or proposed being not addressed were not appealed. There would have been a specific recitation in 1985 were it anyone's intention at that time to make a significant change to the uses, and that the 1985 amendment goes only in so far particularly because this was a mixed use, and Section 4d and not Section 4a applies.
 - d) The language of the CUP (DP-104) limits the use of the parcel at issue to those proposed by the CUP.
 - e) The interpretation made by Kurt Schroeder was supported by the language contained in Wichita-Sedgwick County Unified Zoning Code and of the CUP defining the allowed uses.
 - f) The proposed use of the Parcels for 24-hour emergency care services is not a similar or less intensive use than those allowed by the CUP.

3. The Board further finds that the interpretation of the Zoning Administrator as set forth in his letter of August 15, 2004, was reasonable and is supported by the evidence presented at this hearing.
4. The Board further finds that the appellant has not met his burden of proof to show that the interpretation was in error.

THEREFORE, BASED UPON THE FOREGOING, THE BOARD RESOLVES THAT THE INTERPRETATION OF THE ZONING ADMINISTRATOR HEREIN BE AFFIRMED.

ADOPTED AT WICHITA, KANSAS, this 14th DAY of December, 2004.


James Ruane, BZA Board Chair

ATTEST:


Scott Knebel, BZA Secretary