

Agenda Item # \_\_\_\_\_

City of Wichita  
City Council Meeting  
January 12, 1999

Agenda Report # \_\_\_\_\_

**TO:** Mayor and City Council Members

**SUBJECT:** DP-233 - REQUEST FOR THE APPROVAL OF THE  
HIGHLAND SPRINGS CUP; AND

Z-3287 - REQUEST ZONE CHANGE FROM "SF-6" SINGLE-FAMILY RESIDENTIAL TO "LC" LIMITED COMMERCIAL, "GO" GENERAL OFFICE, AND "B" MULTI-FAMILY GENERALLY LOCATED SOUTH OF CENTRAL AND WEST OF 135TH STREET WEST.  
(District V)

**INITIATED BY:** Metropolitan Area Planning Department

*M. Kraet*  
*kw*

**AGENDA ACTION:** Planning

**MAPC Recommendation:** Approve the rezoning and CUP only for the area including and south of the proposed Central right of way, subject to revised conditions (8-5).

**Staff Recommendation:** Approve, subject to conditions.

**CPO Recommendation:** Failed to pass vote (3-3).

**Background:** The applicant is requesting a zone change from "SF-20" to "LC" Limited Commercial and the establishment of the Highland Springs Community Unit Plan on property located south of Central and west of 135th Street West.

This 12 acre unplatted tract, as initially proposed by the applicant, would contain a net of 8.0 acres for office and commercial uses, divided into six parcels ranging in size from .81 to 2.57 acres. Central Avenue, west of 135th Street West, would be realigned from its present location along the section line to the south, beginning approximately 570 feet west of the present intersection of Central and 135th Street West. Central west of 135th Street West would then align at 135th Street West with Central Avenue east of 135th Street West, approximately 215 feet south of the present day intersection, eliminating the current "jog" at 135th Street West. The applicant and the owner of the

property north of existing Central will have to agree to the vacation of the existing Central Avenue.

Parcels 1 (1.15 acres) and 2 (.87 acre) of the Highland Springs CUP would be north of the realigned Central Avenue. Parcels 3 (.81 acre), 5 (2.28 acres) and 6 (2.57 acres) would be on the south side of realigned Central Avenue, and Parcel 4 (1.21 acres) would be south of Parcel 3, along 135th Street West. As originally submitted the applicant proposed to limit the uses of the six parcels to those uses permitted in the "LC" district except for the following: adult entertainment establishments, group homes, group residential, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor could be developed, as long as food is the primary service of the establishment. Parcel 4 would also not permit service stations, convenience stores with gas islands, restaurants with drive-in or drive-thru facilities and vehicle repair. Each parcel would be limited to one building, except Parcel 5 and 6 would have a maximum of two buildings. A masonry wall would be constructed along the north property line as well as the west and south property lines adjacent to single family homes and zoning, and a 30 foot landscape reserve provides a further buffer along the south and west lines. All signs, as proposed by the applicant, would be monument type signs and would be limited to 80 percent of the frontage and 20 feet in height. Access controls are consistent with recommended standards. The applicant's willingness to dedicate right of way for the realigned Central through his property is contingent on the approval of his development request.

This site is surrounded by undeveloped land to the north. A preliminary plat was approved on the property south and west of this site for single family homes but has not been finalized. One single-family home currently exists just south of Parcel 4. Single-family homes exist to the east across 135th Street West.

CPO 5 voted unanimously to deny this request at the August 26th hearing. Approximately 45 area residents were present at this meeting to voice their opposition to the request. Their concerns were as follows: a) area residents will receive no "benefits" should the request be approved; b) the proposed realignment of Central could create a dangerous situation for motorists; c) there was a lack of advanced notice from the applicant and MAPC staff; d) if approved, the owner would be given too much control over the lives of adjacent property owners; e) lack of "assurances" from the developer should the proposal be approved; f) lack of information regarding the overall plans for the 438 acres; g) potential for increased traffic congestion; h) inaccurate information was received from MAPD staff; and i) there are too many "inconsistencies" associated with the project.

At the August 27th MAPC hearing, the applicant and several neighbors spoke about this request. The action of the MAPC was to defer this request for a month to allow for these individuals and City staff to meet and discuss this request. The applicant's agent met twice with neighboring property owners after the original MAPC hearing. The Planning Director, City Engineer, District Council member, and CPO representatives also attended one or both of these meetings. At the first meeting, residents pressed for an evaluation of moving the alignment of Central east of 135th Street to the north, along the section line, rather than in its current alignment that veers to the south. The owners of large tracts east and west of 135th Street and north of the mile line were both present to voice their support for this option. The City Engineer presented a drawing and calculations showing how it would cost an estimated \$960,000 more to relocate the road in that manner.

Homeowners from Rainbow Lakes also continued to express their opposition to any amount of commercial development, and did not engage the agent in a discussion on how the applicant might be able to mitigate the impact of his proposed development.

At the October 15th MAPC hearing, the applicant's agent was present to speak about this request. Several neighbors also spoke in opposition to this request and stated the same opinions as discussed at previous hearings. The major concern of the neighbors was to move Central from its present day alignment to the north, along the section line. After much discussion, the Planning Commission voted to approve this request, except Parcels 3 and 4 of the CUP shall be zoned "NO" Neighborhood Office instead of "NR" Neighborhood Retail. Protest petitions have been filed which cover 85 percent of the statutory notification area.

On November 10th, the City Council considered the request, noting that the applicant had offered to reduce the number of commercial-zoned acres to conform to the adopted policy. Based on this, the Council voted to return the amended application to the CPO and MAPC.

At the December 16th CPO hearing, the CPO Council failed to approve the request due to a moot vote. Four neighboring persons spoke in opposition to this request. The neighbors voiced similar concerns as previously stated and also asked for a deferral to let the applicant and them discuss this request and try to reach a compromise.

At the December 17th MAPC hearing, the applicant's agent discussed the revised request. Three neighbors spoke in opposition to the request. These persons addressed the same issues as at the previous meetings. After much discussion and several votes, the Planning Commission voted to approve a portion of the request, which included Parcel 3 for "GO" General Office, Parcel 4 for "B" Multi-family, Parcel 5 and 6 for 3 acres of "LC" Limited Commercial and the right of way for the realignment of Central Avenue as shown on the CUP. Parcels 1 and 2 would be left in the current "SF-6" district, and not included as part of the CUP. The primary concern with zoning these northern parcels for some Commissioners was related to the fact that this land is close to the creek and experienced flooding during the recent storm over the Halloween weekend.

The Ordinance establishing the zone change shall not be published until such time as the plat is recorded.

**Recommendation:**

1. Concur with the findings of the MAPC and approve the C.U.P. and zone change request excluding Parcels 1 and 2 and subject to conditions as recommended by staff; and platting the property within one year; or
2. Deny the request, citing appropriate findings.

(An override of the protest petitions requires a 3/4 vote of the membership of the governing body).

AFFIDAVIT

STATE OF KANSAS \
- SS.
County of Sedgwick /

Milt Mounts, of lawful age, being first duly sworn, deposes and saith: That he is Record Clerk of The Wichita Eagle, a daily newspaper published in the City of Wichita, County of Sedgwick, State of Kansas, and having a general paid circulation on a daily basis in said County, which said newspaper has been continuously and uninterruptedly published in said County for more than one year prior to the first publication of the notice hereinafter mentioned, and which said newspaper has been entered as second class mail matter at the United States Post Office in Wichita, Kansas, and which said newspaper is not a trade, religious or fraternal publication and that a notice of a true copy is hereto attached was published in the regular and entire Morning issue of said The Wichita Eagle for 1 consecutive issues - weeks, that the first publication of said notice was

made as aforesaid on the 30th day, of March A.D. 2001, with

subsequent publications being made on the following dates:

And affiant further says that she has personal knowledge of the statements above set forth and that they are true.

[Handwritten signature]

Subscribed and sworn to before me this 30 Day of March, 2001

Notary Public Sedgwick County, Kansas

NORMA J. HOCH
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 8-12-02

My Appointment Expires August 12th, 2002

Printer's Fee \$32.64

LEGAL PUBLICATION

CW

Published in The Wichita Eagle
March 30, 2001 (#1342211)
ORDINANCE NO. 44-863

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 CITY OF WICHITA CODE SEC. 28.04.010.

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 City of Wichita Code Sec. 28.04.010, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. Z-3287
Zone change request from "SF-20" Single-Family Residential District to "LC" Limited Commercial District, and "SF-20" Single Family Residential District to "GO" General Office District, on property described as:
Lots 3 and 4, Block A, and Lot 1, Block B ("SF-20" to "LC"); and Lot 1, Block A, and Lot 2, Block B ("SF-20" to "GO"), Highland Springs Commercial Addition, Wichita, Sedgwick County, Kansas.

Generally located on the southwest corner of 135th Street West and Central.
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 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, FEB. 27, 2001.

ATTEST:
Pat Burnett, City Clerk (SEAL)
Bob Knight, Mayor

RECEIVED

APR 3 2001

METROPOLITAN PLANNING
OUTE

PAID  
F-11

*Jerry S.*

GARY E. REBENSTORF  
City Attorney  
DOUGLAS J. MOSHIER  
Senior Assistant City Attorney  
City Hall - 13th Floor  
455 North Main  
Wichita, Kansas 67202  
(316) 268-4681  
FAX: (316) 268-4335

FILED  
APP. DOCUMENTS

SEP 24 3 54 10 99

COPY

CLERK OF  
18TH JUDICIAL DISTRICT  
SEDGWICK COUNTY, KANSAS  
BY

IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT

JOHN DUGAN, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) CITY OF WICHITA, KANSAS, )  
 ) A Municipal Corporation, et al., )  
 )  
 ) Defendant. )

Case No. 99 C 616

JOURNAL ENTRY

NOW on this 24 day of September, 1999, this matter comes on for hearing. The plaintiff appears by his attorney, Dennis L. Gillen, and the defendant appears by and through its Senior Attorney, Douglas J. Moshier. There are no other appearances.

THEREUPON, the parties inform the court that there is no dispute as to the material facts, which facts are recited and stipulated to by both parties. After considering the stipulated facts, listening to the arguments of counsel and being otherwise fully advised in the premises, the court, finds as follows:

1. Plaintiff brings this action pursuant to K.S.A. 12-760.
2. The court has jurisdiction of the parties and the subject matter.

*h*

3. Plaintiff is the owner of certain real property as legally described in his petition, which real property was subject to applications for a zone change and a community unit plan before the Wichita-Sedgwick County Metropolitan Planning Commission and the governing body of the City of Wichita, Kansas.

4. On January 26, 1999, the matter of plaintiff's applications were considered by the governing body of the City of Wichita, Kansas. Because of a protest petition filed by nearby landowners, approval of plaintiff's applications required an affirmative vote of at least six of the seven members of the governing body.

5. At the January 26, 1999, meeting, plaintiff's applications were not approved because the vote on the motion to approve the applications, with modifications, received only five affirmative votes.

6. The basis of one of the votes in opposition to plaintiff's applications was that approval would create potential for additional surface water flooding problems to properties in the vicinity of plaintiff's property and that a flooding study should be done prior to approval of plaintiff's applications.

7. The consideration of the potential for increased flooding problems in connection with the application for zone change and a community unit plan is not appropriate. While such concerns are matters to be considered by both the Planning Commission and the governing body, they are appropriately dealt with and regulated in connection with the platting of property.

IT IS THEREFORE BY THE COURT CONSIDERED, ORDERED AND ADJUDGED that the denial by the governing body of the City of Wichita of the applications for zone change and community unit plan of the plaintiff, Cases Z-3287 and DP-233, was arbitrary so far as one

of the votes in opposition to said cases was based solely on considerations of the impact of such applications on flooding in the area.

IT IS FURTHER BY THE COURT ORDERED that in Cases Z-3287 and DP-233 the action proposed by the governing body, as reflected in the motion made by council member Ferris on January 26, 1999, be and the same is hereby made the judgment of this court. Specifically, plaintiff's applications are approved subject to the following: the zoning of Parcel 4 shall remain SF-6, Parcels 2 and 3 are zoned General Office and shall contain a covenant, in addition to all other restrictions recommended by the applicant and the City of Wichita, which will require that buildings constructed thereon be residential style buildings; Parcels 1, 5 and 6 shall be zoned Light Commercial with all the restrictions recommended by the applicant and the City of Wichita.

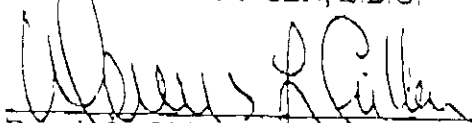
IT IS SO ORDERED.

TIMOTHY G. LAHER

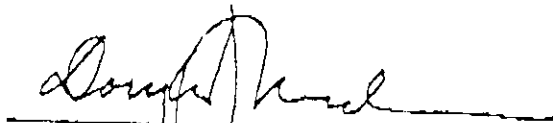
Judge of the District Court

APPROVED:

DEPEW AND GILLEN, L.L.C.



Dennis L. Gillen, #07429  
Attorneys for Plaintiff



Douglas J. Mosnier, #08829  
Senior Assistant City Attorney  
Attorney for Defendant