

Map No. 5746  
Sec. No. 26  
Twp. No. 27S  
Range 1E

Subdivision Report and Progress

S/D No.: 71-21

Name: PERDEL ADDITION

General Location: On the south side of Kellogg in an area between Pershing and Dellrose

Owner: A. J. King  
Address: 1807 East Douglas 67211 Phone: 265-1481  
Subdivider: Same  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
Engineer/Surveyor: Baughman Company  
Address: 2522 East Kellogg 67211 Phone: 683-7431

Application Received 4-5-71  
Conf. with Applicant None  
Sketch Plat Received 4-5-71  
Present Zoning "A"  
\* Proposed Zoning "LC"  
Letter of Intent None

FINAL PLAT RECEIVED 4-5-71  
S/D Comm. Action 4-15-71 Approve

Dept. Report on Final 4-19-71  
M.A.P.C. ACTION 4-22-71 Approve  
Dept. Report on Final 4-23-71  
Letter on Irons Received N/A  
Title/Taxes Rec'd & Reviewed 8-3-71  
Final Review 8-4-71  
Referral to B.C.C. 8-5-71

PREL. PLAT RECEIVED none submitted  
S/D Comm. Action N/A

Dept. Report on Prel. N/A

B.C.C. ACTION 8-10-71 Approve \*  
Recorded 8-27-71

TRACING PROGRESS:  
Received 8-2-71  
Released 8-18-71  
Received \_\_\_\_\_  
Released \_\_\_\_\_

Comments:

- \* Z-1203 - Associated zone case from "A" to "LC", approved by the Bd. of City Commissioners on Sept. 22, 1970.
- \* 8-10-71 B.C.C. approved plat - required 400 foot rather than 200 foot benefit area for covenants.
- 8-18-71 Called A.J. King office to pick up tracing for recording.

REGISTER OF DEEDS

SEDGWICK COUNTY, KANSAS

*798*  
*4-21-71*

PERDEL ADDITION was

filed for record on August 27, 1971.

S-1 5-17

79

vh

*John Hak*

Register Of Deeds

T9-328

For Clerk's Use Only

**SUBPOENA DUCES TECUM**

The State of Kansas }  
Sedgwick County } stc Case Number C-28925

THE STATE OF KANSAS TO MR. JACK GALBRAITH  
You are summoned to appear in person and bring with you the minutes of the Metropolitan Area Planning Commission (Wichita, Sedgwick County, Kansas) of August 27, 1970 and June 24, 1971, and specifically, that portion of the minutes concerning zoning Case Z-1203, "A to LC".

Serve Mr. Jack Galbraith  
c/o Metropolitan Area Planning Commission  
City Annex Building (4<sup>th</sup> FLOOR)  
104 So. Main  
Wichita, Kansas.

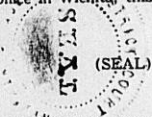
Mr. Galbraith-we will call you on the phone  
*(500 minutes) furnished*

RECEIVED  
SHERIFF'S DEPARTMENT  
SLEDGICK COUNTY, KANSAS  
APR 4 3 58 PM '74

WE COMMAND YOU to be and appear in your own proper person before the Judge of Division No., of the District Court of the County of Sedgwick, at the Court House in Wichita, County of Sedgwick, on the 5 day of April, 1974, at 10 o'clock M., of that day, then and there to testify on behalf of the defendants in a certain controversy now pending and undetermined in said court, wherein Frey-Garvco, Inc. is plaintiff and Mobil Oil Corp., et al defendant, and this do you in nowise omit under the penalty of the law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Wichita, this 4 day of April, A. D. 1974.

DOROTHY I. VAN ARSDALE  
Clerk



SAUMS AND GRANT Atty. for Defendants

*Maryann Clancy*  
Deputy Clerk.

**SHERIFF'S RETURN**

Received this writ \_\_\_\_\_, 19\_\_\_\_. Served the same by delivering a certified copy to each person named personally, at the times following, to-wit:

_____	_____	_____	_____	19____
_____	_____	_____	_____	19____
_____	_____	_____	_____	19____
_____	_____	_____	_____	19____

Served the same by leaving a copy thereof at the usual place of residence, at the times following, to-wit:

_____	_____	_____	_____	19____
_____	_____	_____	_____	19____
_____	_____	_____	_____	19____

The following persons not found in Sedgwick County:

_____	_____	_____	_____	19____
_____	_____	_____	_____	19____

Serving first person \$	_____
Serving _____ copies	_____
Not found .....	_____
Mileage _____ at 9c	_____
TOTAL.....\$	_____

*Not called to appear.  
CHB 4/9/74*

SHERIFF  
DEPUTY

Excerpt from P.C. minutes  
7/8/20/70 Associated with  
Zone Case Z-1203

Page 27  
8-27-70

BLEDSE pointed out that there should not be more than one entrance on West Street allowed.

No one spoke either in favor of or in opposition.

MOTION: BLANCHAT moved, WILKINSON seconded and it carried unanimously that the Planning Commission recommend to the City Commission that this application be approved, subject to platting within one year from the date of approval by the City Commission, in order to provide for adequate street right-of-way on West Street, access control and uilding setbacks, or the application be denied, and that the ordinance effectuating the zone change not be published until the plat has been recorded with the Register of Deeds.

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34. Case No. Z-1203-- L. Vernon Johnson and A. J. King request change from "A" to "LC" for Lots 1, 2, 3, 22, 23, 24, Block 2, Kellogg Heights. Generally located on the south side of Kellogg between Pershing and Dellrose.

LAKIN pointed out the area on the map and reviewed the following staff report:

Comments

1. In the latter part of 1958, a request for a change of zoning from "A" to "LC" (Z-0110) was filed for the area contained in this application. Action of the Planning Commission was to recommend denial of "LC" and that the area be rezoned to the "BB" Office classification. The City Commission denied the application.
2. In the middle part of 1963, a request was again filed on subject property by the present owner for a change of zoning from "A" to "LC" (Z-0472). The Planning Commission recommended that the application be denied and on July 23, 1963, the City Commission concurred in the recommendation of the Planning Commission.
3. On September 5, 1963, the Planning Commission considered a request for a change of zoning from "A" to "BB" (Z-0491) on the same area. Action of the Planning Commission was to recommend approval of the application. Subsequent to this action, 39.28% of the property owners within 200 feet filed valid protest petitions. At the meeting of the City Commission on October 1, 1963, a motion to approve the change failed to receive a 4/5ths vote and the application was denied.
4. On August 8, 1968, the Planning Commission considered a request for a change of zoning from "A" to "BB" (Z-1013) for the area contained in this application, plus an additional lot on Dell-

rose adjacent on the south. Action of the Planning Commission was to recommend the application be approved, subject to replatting. This recommendation was concurred in by the City Commission at the meeting of September 17, 1968, with the exception of the southernmost lot on Dellrose, which was withdrawn from the application at the applicant's request. It should be noted that the replatting has not occurred and the file remains an open case.

5. It should be pointed out that three applications for "LC" zoning on the northwest corner of Kellogg and Dellrose in recent years have been recommended for denial by the Planning Commission and denied by the City Commission. It should also be pointed out that in denying the first request, the land was approved for a change to "B" and "BB" and an office building presently occupies the site.
6. The property on both sides of Kellogg from Rutan east to Dellrose is devoted entirely to low density residential and medium density office uses, with the exception of the intersection of Kellogg and Bluff, which is commercially developed.
7. The residential development in the general area is for the most part above average quality and well maintained. It is recognized that single-family and duplex uses are not practical immediately adjacent to Kellogg, and a reasonable classification should be determined to provide both a buffer adjacent to the residential as well as to provide an economically feasible development. It is the opinion of the Planning Department that proper classification to achieve this equitable solution is "BB" Office, which is the policy of the Planning Commission from Rutan to Dellrose.
8. In viewing the general area along Kellogg, it may be seen that several offices exist which have been designed to blend compatibly with adjacent residential properties. There also has been several recent "BB" applications approved in this area, which indicates that a demand exists in the area for office facilities and that they can be developed satisfactorily with the existing residential area.
9. There has been no change of a commercial nature in the area since the original application for "LC" was filed and denied in 1958 to warrant the granting of the light commercial zoning requested.

#### Recommendation

Based on the foregoing review and comments, it is the recommendation of the Planning Department that this request for "LC" Light Commercial not be approved and that the application area be approved for the "BB" Office classification, subject to re-

platting in order to provide for adequate right-of-way for Kellogg, access control and building setbacks within one year from date of approval by the Board of City Commissioners, or the application be denied, and that the ordinance effectuating the zone change not be published until the plat has been recorded with the Register of Deeds; and that the staff be instructed to close Case Z-1013.

GEORGE B. POWERS, attorney for the applicants, pointed out that there have been changes in the area since previous considerations of rezoning for subject property. He stated that it is desired to relocate the Johnson Oil Company service station at Grove and Kellogg to this location, since the present location will be required for the highway interchange at Grove and Kellogg. POWERS said that one of the houses to the west has been removed and that the house on the corner to the west has been converted to a dental office and that on to the east of the application area is all light commercial. POWERS noted that in 1968, the Planning Commission determined that subject property should not be "A" or "AA" and that it should be established as a buffer zone of "BB" Office. POWERS continued that since that time there have been changes in the area, principally the medial strip on Kellogg which definitely makes it a commercial street in that it can no longer be used for housing from an economic standpoint.

POWERS felt that his client has been placed in a very dangerous position in view of the taking of his property for the interchange, in that it is one of the ten largest stations in Wichita volume-wise. He agreed that his client is being paid for the physical taking, but that payment for damage because of loss of business, is difficult to establish. He felt that unless Johnson Oil Company can establish another station in the vicinity, irreparable damages will be suffered.

POWERS called attention to a Federal law passed in 1968 which declares that the prompt and equitable relocation and re-establishment of business (as well as persons, farmers, etc.) displaced as a result of the federal highway programs and construction of federal aid highways is necessary to insure that individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Congress further determined that relocation payments and advisory assistance should be provided to all persons or businesses displaced. Further, it is provided that states shall provide a relocation advisory assistance program which shall include such measures, facilities or services as may be necessary or appropriate in order to determine the needs, if any, of displaced families, individuals, business concerns, etc. for relocation assistance, and to assist owners of displaced business in obtaining and becoming established in suitable locations.

POWERS pointed out that there is only one other possible service station location between Broadway and the Turnpike, and it is owned by Mrs. Hudson and not available for a service station. Unless this station, Johnson Oil, is replaced one of the major businesses will be eliminated and he considered this point very

important in the Commission's consideration of this request.

As for the operation of the proposed station, POWERS said they do not operate 24 hours, they do not do any repair, or sale of tires - they simply sell gas and oil. He stated that they proposed to build a modern station and he submitted a picture of the type of structure proposed. He stated that lights would be directed away from adjoining property and a new type of light would be installed which would be quite attractive and that there should be no adverse affect therefrom to the adjacent areas. POWERS also pointed out that unless this request is approved, the City would stand to lose tax return from an investment of \$125,000 to \$200,000, and he considered it would be an economic loss of income to the City, and to the employment in the City, unless businesses are permitted to relocate when displaced by highway construction.

POWERS suggested that the only property that would actually be affected by the change requested would be those adjacent, and in this case the applicant (King) owns the house to the south of that portion of subject property on Dellrose (Lots 1, 2 and 3) and of course there is no objection there. He stated that there is a home on the east side of Dellrose which would be diagonally across from the service station if it is placed on the east portion of subject property; however, this home is immediately south of an existing service station, and it was his understanding it was purchased by its present owner in 1968.

POWERS felt that Mr. Kimbell who owns the residential property on Pershing south and adjacent to the west portion of subject property, would be adversely affected and stated that Mr. Kimbell has been much opposed to any change of subject area. In view of Mr. Kimbell's opposition and possible adverse affects on his property, POWERS said they were agreeable to providing any kind of decorative fence of any height and design acceptable to Mr. Kimbell and that they would make a 25 or 30 foot planting which would completely shield his home from the station, and that they would provide a contract that they would maintain the screening in good condition at all times. POWERS commented that it is his understanding that Mr. Kimbell and other residents of the area have no objection to an office building on subject property, but it was his opinion that an office building would be less attractive than the screening suggested.

POWERS stated that some of the opposition may be because of the feeling that a service station would increase traffic on Dellrose and Pershing; however, it was his belief that it would not. He noted that there is presently some extra traffic on these two streets because of motorists desiring to avoid the signal at Oliver, but it did not seem likely to him that someone stopping for gas or oil would go through the residential area after making the purchase.

It was pointed out by POWERS that subject property has been

approved for "BB" zoning for over three years and there have been no buyers, and it is valuable land and ought to be developed. He referred again to the action of Congress and the fact that while an owner is paid for the taking of property, there is no way to compensate for the loss of business. He repeated that they need a station on the south side of Kellogg and development of this property would add materially to the tax revenue for the City.

The question of traffic count was brought up and POWERS reported the following figures: Traffic headed east on Kellogg in a 24-hour period in 1968 was 12,000 and at present it is about 14,000 vehicles.

BLEDSON asked Mr. Powers if his clients would be willing to file restrictive covenants limiting the use of the property to a service station for a period of ten years. POWERS noted that a service station would not require the entire property. BLEDSON said he had in mind a restriction which would assure there being no drive-in type facility, beer tavern or any use which would be noisy or create a disturbance in the neighborhood.

POWERS said it would be their plan to buy the entire property, one-half to be used for a service station, and they would be willing to restrict the use of the property in any reasonable fashion so it wouldn't adversely affect the neighbors.

In considering the right-of-way on Kellogg, POWERS said they have anticipated an additional requirement in this respect and it will be taken care of through replatting.

CHAIRMAN JACKSON declared a 5-minute recess after which the meeting reconvened with the same members present.

WILLIAM R. WOOD, attorney, spoke in opposition, on behalf of himself as a resident in the area and on behalf of other property owners. He submitted a protest signed by 20 people in the area, most of whom were present. He stated that they are violently opposed to a service station and that he purchased his home (just south of Mr. Klepper's service station) in 1968 when he moved to Wichita, with the understanding that the application area was "BB" zoning which would permit office uses. He said if it had been zoned "LC" at that time, he would not have purchased his property. He felt that a service station would devalue every property in the area and that most of the homes are \$14,000 to \$22,000 in value. WOOD pointed out that there is a Johnson Oil Company service station only a few blocks west on Kellogg and that there is no medial immediately in front of it and thus the station can be reached from any direction, so he could not feel too much sympathy for the oil company. He did not think the general area needs a replacement for the station being eliminated because of the existing five service stations in the vicinity of Oliver and Kellogg.

WOOD felt that the property could be used for offices, and he also brought out the fact that there are restrictive covenants on Lots 22, 23 and 24 (on Pershing) which would require the approval of 3/4 of the owners of property in the Addition before they could be lifted; however, there are no such covenants on Lots 1, 2 and 3 (on Dellrose). WOOD pointed out the existing office buildings or doctor or dentist offices in the area and felt that if a reasonable price is placed on those properties, they would sell for such use also. He pointed out that no doubt the Johnson Oil Company was well paid for the loss of the location at Grove and Kellogg; however, he pointed out that there is no way for the City to pay 20 land owners in the area for the devaluation of their homes because of this requested rezoning.

WOOD said all the owners in the area would be happy to have an office building and in fact would prefer any kind of development except a service station, especially in view of the existing stations in the area to serve the residents or motorists. WOOD said that there was concern when the "BB" was approved several years ago that it would merely serve as a stepping stone to "LC" for King's benefit. At that time, the residents were told that such was not the case - that "BB" was satisfactory with the owner.

HENNESSY asked Mr. Powers if he was aware of the covenant on the west lots and POWERS said he was and that there is a method of legally lifting such restrictions; (75% of the owners of property in the Addition), and that at this time he has obtained signatures of some of the owners, but not 75%. However, he pointed out that that is not a matter for the Planning Commission to be concerned with.

KENNETH STEWART, attorney, spoke in opposition on behalf of Mr. Klepper, owner of the service station to the east. He suggested that the Commission should consider this case very carefully inasmuch as this area has been before the Commission three or four times in the last ten years, and the whole area on Kellogg is receiving a great deal of publicity in terms of its future use.

STEWART pointed out that there are other factors to be considered other than just the operation of the Johnson Oil Company, and he agreed with Mr. Powers that subject property is not desirable for residential use because of the medial; however, the "BB" Office zoning has been approved by the Planning Commission more than two years ago. As for the loss to Johnson Oil Company in losing their present site at Grove and Kellogg, STEWART said he was sure they had received full value for the property through the condemnation procedure; further, there has been no action on the part of the State of Kansas which recommends that Johnson Oil Company be allowed to relocate at subject location.

STEWART felt that the disadvantages of the proposed rezoning have not been looked at thoroughly. He referred to the Master Plan for improvement of Kellogg, noting that it is proposed that it will eventually be made a highly traveled major thoroughfare with additional

right-of-way being required, in which case, (if this request is permitted and the service station developed), the new station would also be condemned and the City would be asked again to move the proposed use to another new location. He questioned the advisability of such a procedure when it would mean replacing the use at some future time.

STEWART commented that it has been suggested that the proposed change affects the public interest in various ways, and of course it is obvious that what is proposed would affect his client from the standpoint of competition. As to the public interest, STEWART asked if there is any private interest which so overrides the public interest that the public interest should be ignored and the private interest upheld. With respect to the public interest, STEWART stated that one of the questions is, is the station needed and does it serve the public, would it aid the motoring public going east on Kellogg, would it provide a service not already available. Reference was made to the surrounding neighborhood and the fact that the west portion of subject area cannot be used commercially unless approved by 3/4 of the owners in the Addition, and STEWART suggested that the opposition of the owners is increased in view of their legal rights represented by the restrictive covenants.

STEWART referred to the zoning policy and the fact that the staff has reviewed recent applications for rezoning in the area, one case being approved for "BB" and an office building having been constructed thereon, although the request was for "LC". He thought there was a great deal to be said for the policy the Commission has established of not going beyond "BB" zoning in this area, in view of the Master Plan for improvement of Kellogg, and he asked that the Commission observe the past policy. As for private interest, STEWART pointed out that this is not a case where an owner has held the land for a long time unable to develop it, but rather any burden so far as chances for development have been eliminated by reason of the "BB" zoning approved a few years ago.

In summary, STEWART commented that it is obvious the change is not in the public interest and that there is no overriding private interest; there is only one private interest and that is purely economical and will saddle this community with the possibility that subject property would have to be condemned at some later date for improvement and upgrading of Kellogg. He doubted that the additional taxes which is claimed will be paid by the proposed development would warrant the tax cost for condemnation at a later time.

About ten property owners in the area stood to indicate their opposition, and STEWART said that some had to leave the meeting earlier.

HENNESSY referred to an earlier zoning request for "LC" which was approved and fourplexes removed to permit light commercial development and felt that a precedent had perhaps been set by this previous action. He thought that he considered it obvious that it was the feeling that "LC" would be granted and as far as the covenants, he thought that should be up to the applicant in that the City has no control over private restrictions.

**MOTION:** HENNESSY moved and KAMEN seconded that the Planning Commission recommend to the City Commission that this application be granted with proper screening on the south side as prescribed and any other covenant or legal instrument that Mr. Powers and his client have made in the neighborhood.

BLEDSON asked if there would be any opposition to requiring restrictive covenants, that no retail food or beverage business would be developed for a period of ten years. Discussion indicated this would include tavern or drive-in type operations.

**AMENDED MOTION:** HENNESSY, with the approval of the second, amended the above motion to recommend to the City Commission, based on the offering of voluntary restrictive covenants guaranteeing fencing and screening along the south side of the property as proposed by the applicant, and guaranteeing that the development of subject property shall exclude a retail food or beverage business for a period of ten years, the approval of the request, subject to replatting in order to provide for adequate right-of-way for Kellogg, access control and building setbacks within one year from date of approval by the City Commission, or the application be denied, and that the ordinance effectuating the change not being published until the plat has been recorded with the Register of Deeds, and that the staff be instructed to close Case No. Z-1013.

STEWART indicated that his clients are opposed to the change regardless of the covenants proposed.

BLEDSON said his vote would not be based on any need for the City to provide a location, but strictly on land use. He said he was not so much concerned about the west half because it already has private restrictions, and it was his reasoning that in ten years, there would likely be a change in the neighborhood. As for the traffic count, he continued that that is the only logical place for a service station - where there is a large traffic count.

LAKIN asked for a clarification of screening and HENNESSY said he had in mind the type that Mr. Powers had indicated they would provide. POWERS said they have no intention of building a structure which would not be compatible with the neighborhood and that they intend to screen the site whether required to or not.

**VOTE ON ABOVE MOTION:** Carried unanimously.

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Excerpt from P.C. minutes  
of 6-24-71 Assn. Meeting  
with 2 - 1203

Page 7  
6-24-71

buffer for the residences to the north, it would be desirable that assurances be provided that subject property will not be utilized for other than a garden center, or uses permitted in the "LC" Light Commercial District.

4. In the event the Planning Commission recommends approval of the application, the normal requirement is to require the platting of the property within one year from the date of approval by the Board of City Commissioners; or the application be considered denied.

GALBRAITH said it was the Staff recommendation that this application be approved subject to platting to include the area proposed to be dedicated to the City and covenants that the area requested for "C" zoning will be used only for a garden center or other uses permitted in the "LC" district. It was pointed out that the only reason for asking for "C" was because that district is required for outside display of merchandise which is usually associated with a garden center.

DON BOTTENBERG was present in support of the request and said they were willing to submit covenants that the area would be used as a garden center and that they were agreeable to the Staff recommendation, including platting.

No one appeared in opposition.

**MOTION:** JACKSON moved, TAYLOR seconded and it carried unanimously that, based on the offering of restrictive covenants that the area requested for "C" Commercial zoning would not be used for any use other than a garden center or uses permitted in the "LC" Light Commercial district, the Planning Commission recommend to the City Commission that this request be approved, subject to platting the application area as well as the area proposed to be dedicated to the City for drainage purposes, all within one year from the date of approval by the City Commission, or the application be considered denied, and that the ordinance effectuating the change not be published until the plat has been recorded with the Register of Deeds.

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10. Request for clarification of voluntary restrictive covenants which were offered as a condition of approval of zone case Z-1203 - "A" to "LC", generally located on the south side of Kellogg between Dellrose and Pershing.

GALBRAITH reviewed the following information which had been provided the Planning Commissioners prior to this meeting:

The above captioned zone change request was considered by the Wichita-Sedgwick County Metropolitan Area Planning Com-

mission at their regular meeting on August 27, 1970. Based on the offering of voluntary restrictive covenants guaranteeing fencing and screening along the south side of the property; and guaranteeing that the development of subject property shall exclude a retail food or beverage business for a period of ten years, the Planning Commission recommended approval of the zone change subject to replatting of the property to provide for adequate right-of-way for Kellogg, access control and building setbacks. On September 22, 1970, the Board of City Commissioners approved the zone change as recommended by the Planning Commission.

The attorney representing the owner has requested a clarification of the voluntary restrictive covenants as it was their impression that such covenants were to exclude the type of food facility such as operated by Kings-X, Sandy's, McDonald's hamburger stands, and the like; but were to permit small grocery stores, such as 7-11 or Quik Shop or small drug stores.

GALBRAITH said notices of this request were sent to those receiving notices of the original hearing of the zone case and attorneys representing the opposition. For purposes of refreshing the Commissioners as to the previous action, the following excerpt from the hearing on August 27, 1970, was read:

**MOTION:** HENNESSY moved and KAMEN seconded that the Planning Commission recommend to the City Commission that this application be granted with proper screening on the south side as prescribed and any other covenant or legal instrument that Mr. Powers and his client have made in the neighborhood.

BLEDSOE asked if there would be any opposition to requiring restrictive covenants that no retail food or beverage business would be developed for a period of ten years. Discussion indicated this would include tavern or drive-in type operations.

**AMENDED MOTION:** HENNESSY, with the approval of the second, amended the above motion to recommend to the City Commission, based on the offering of voluntary restrictive covenants guaranteeing fencing and screening along the south side of the property as proposed by the applicant, and guaranteeing that the development of subject property shall exclude a retail food or beverage business for a period of ten years, the approval of the request, subject to replatting in order to provide for adequate right-of-way for Kellogg, access control and building setbacks within one year from date of approval by the City Commission, or the application be denied, and that the ordinance effectuating the change not being published until the plat has been recorded with the Register of Deeds, and that the Staff be instructed to close Case No. Z-1013.

GEORGE B. POWERS, attorney for the applicants in the above case, reviewed the circumstances of the previous action with respect to the restrictive covenants, and said that at the time of the previous hearing, the plans were for a Johnson Oil Company service station on the lots on Pershing, and there was no objection to the exclusion of food and drink, it being his understanding at the time (and he assumed that was the understanding of the Commissioners) that reference to food and beverage referred to uses such as Sandy's, McDonald's or Dairy Queen, where there is excessive traffic, noise, lights, etc. POWERS said that after the meeting his client had asked about the right to sell bottled drinks and candy bars from the service station and Powers had indicated he thought such was not excluded from the motion.

POWERS pointed out that since the previous meeting, he has been unable to secure approval from 75% of the owners in the Addition for lifting the limitation of only single-family development on the lots on Pershing and the Johnson Oil Company has decided not to utilize such property. POWERS continued that it is his understanding the property owners in the area would be agreeable to a business building or dental or medical clinic, but do not want a service station regardless of screening.

POWERS said that his client has an opportunity to trade properties with Mr. Luis Casado, but that Mr. Casado is not agreeable to the restriction so far as sale of food or beverage. He suggested that they should have an interpretation of the meaning of the reference to food and beverage for preparation of the covenants in connection with the platting which is now in process. POWERS commented that perhaps the strict reading of the motion would prohibit a high class restaurant or a grocery store, but he doubted that such uses were what the Commissioners had in mind when the motion was voted on. He felt there had been no discussion of this point after Bledsoe had suggested the amendment to the original motion on August 27, 1970.

**HENNESSY ARRIVED.**

KAMEN recalled that during the discussion, it was very clearly outlined by the applicant that it would be a very clean, neat and orderly service station so that the neighborhood would not be adversely affected, and there was discussion of not only dispensing of food and beverages, but also what area the service station could cover and the location of pumps.

KAMEN said the manner in which the application area was reported to be developed was the basis for allowing the zoning and then in order to make certain everything was covered and that there would be no retail sale of food and beverage in the sense of allowing anything else that was disturbing to the neighborhood, Bledsoe had suggested the wording in the amended motion related to food and beverage.

HENNESSY pointed out that this property has been vacant for many years and other areas in the general neighborhood along

Kellogg have been approved for light commercial, and during the discussion of the application, the residents in the area were reluctant to have another drive-in type restaurant in the area in view of the nuisance created by another such use farther to the east. It was his opinion that when the zoning was approved for "LC" it was for the reason that there would not be a drive-in type restaurant and he could not recall that the Commission told anyone at the previous meeting that candy bars or pop could not be sold in a service station. HENNESSY said he objected to a drive-in type use, such as Sandy's, but not to a grocery store or something of that category, and he pointed out that an interpretation of this matter could be taken to court.

LUIS CASADO said he had entered into a contract to trade for the property and was told there were restrictions against drive-in type restaurants although zoned, "LC". He stated that the situation as it now stands with respect to the property would not permit its use as he desires.

In response to clarification with respect to covenants on the west property, POWERS explained the restrictions in detail and his failure to get approval for lifting them, and stated that as of now nothing but single-family development could occur on the west lots regardless of how they are zoned. He said if the Commission actually meant what was indicated by the wording of the previous motion that retail food cannot be sold for 10 years, then such would have to be included in the covenants, but it was his opinion that was not the intent, but that the intent was only to prohibit drive-in type operations.

There was more discussion and review of the minutes of August 17, 1971 and reference made to other light commercial zoning granted in this general area along Kellogg.

ROBERT L. SMITH, attorney living in the area and representing owners in protest, questioned the Commission's even hearing this matter as to what is meant, when the motion clearly provides for exclusion of retail food or beverage businesses for ten years and no reference made as to what is sold or in what form. He stated that notice from the Planning Department Staff indicated the possibility of a 7-11, Quik Shop or small drug store, although no mention has been made at this meeting of what is proposed. SMITH made reference to the statement at the previous meeting that the service station which was proposed only sold gas and oil - nothing more, no tire repair, car repair, etc., and that they do not operate 24 hours a day.

SMITH pointed out that the minutes of the Planning Commission meeting indicate there was previous discussion with respect to food and beverage prior to the motion and amendment as made by Mr. Bledsoe. At that time, Mr. Powers had assured the Commission that the selling of food and beverage was not in the plans.

SMITH said it was interesting to note that an argument for granting of the zoning as projected by the applicant and his attor-

ney was the claim that there was no other location on the south side of Kellogg east to beyond the City limits, other than Mrs. Hudson's property which was not available, and yet when plans for lifting the restrictions on the west portion of subject property did not materialize, Johnson Oil Company is constructing a station on the south side of Kellogg just east of Oliver where they obtained light commercial zoning.

SMITH felt that the request being considered for clarification actually is a request for amendment of the application or approval, and that legal requirements have not been met so far as public hearing for amendment in that no legal publication was made to rehear this case. He felt that any action taken today so far as changing any wording in the previous motion would have to go back to the City Commission.

ORLIN WAGNER, attorney residing in the area, commented that Powers has expressed concern for the valuable property which has been undeveloped for many years, and yet has apparently not considered the value represented by the 35 to 40 homes in the two block area of Kellogg Heights Addition, which would be considerably lowered in value and rendered less desirable for homes by undesirable development on subject property. He pointed out that it was the applicant's suggestion at the City Commission meeting to put certain restrictions on the development of the property and now they are attempting to gain favorable clarification to amend the restrictions. It was his feeling that in view of the possible trade or sale with Mr. Casado, that Mr. Powers would like the Commissioners to believe that a grocery store or restaurant does not have traffic. Also, apparently Mr. King would like to sell the property to his own economic advantage and doesn't care about the economic disadvantage to the residents in the area. He maintained that the voluntary restrictive covenants as indicated in the motion of the Planning Commission on August 27, 1970 are very clear and do not need any interpretation.

WAYNE KING, representing his father who owns subject property, said when the property was purchased 8 years ago there was some idea of building a restaurant, and when it was discovered they could not do so, they have attempted to do something about selling the property. He resented the inference that they were crafty and trying to "hoodwink" members of the Commission, but are only trying to sell the property because they themselves cannot use it, and too when one considers the required dedications associated with replatting, the useable area is reduced considerably. He indicated they are just trying to break even so far as disposing of the property, and as for development of a doctor or dental clinic, he pointed out that real estate people usually list property for sale and then find a buyer, rather than finding a buyer and then the property. KING repeated that there is nothing sly or underhanded about transactions on the property and their only desire is to do something with it.

KENNETH KIMBELL, 518 South Pershing, spoke in opposition to any relaxing of the conditions established at the other meeting, and that they believe the property could be developed as a dental or medical clinic with an attractive building and grounds as developed just to the west of Pershing and north of Kellogg - something that is not open at late hours of the night and that does not have associated excessive traffic or noise.

HENNESSY agreed that the people in the area should be protected through screening regardless of what is developed.

LAKIN said the reason this is on the Commission agenda is because in interpreting the motion on August 27, 1970, the attorney for the applicants did not agree with the Staff, and after checking with the maker and second on the motion, there is still not agreement, and for that reason it was felt the Commission as a whole should make the interpretation. He pointed out that the Staff needs this information to know what to accept in the way of restrictive covenants when the replatting occurs.

KAMEN said that in his opinion the minutes speak for themselves and that no retail food or beverage business can be conducted on the property. The possibility of the sale of candy and pop associated with a service station, he did not consider a full retail use, but only accessory to the principal use.

LAKIN assumed the meaning then was that any type of retail sales of food, including grocery store, restaurants, drive-ins, taverns, etc. would be prohibited, and that it is not a question of whether the food is prepared, carried off or consumed on the premises.

HENNESSY expressed some concern for the fact that this property would be limited in its development while other areas along Kellogg are not.

KIMBELL spoke again and indicated they are not opposed to development and that they are not talking about value moneywise so far as their homes, but are talking about the highest degree of enjoyment in living in their homes and that they are agreeable to anything which will not detract from the livability of their homes and would like to see a medical or dental clinic established.

JACKSON said that as far as he was concerned, the minutes of August 27, 1970 correctly reflect and state explicitly what the intent of the action was. TAYLOR concurred.

KAMEN expressed that in his opinion the original motion to exclude retail food or beverage business included restaurants, drive-in restaurants, taverns, clubs, large and small grocery stores, etc.

MOTION: KAMEN moved, it was seconded and carried by a vote of 5 in favor (Kamen, Souders,

Taylor, Burnett and Jackson) and I opposed (Hennessy) that the words in the amended motion speak for themselves; that it was meant to exclude all food and beverage businesses, but not the sale of soft drinks or candy as an accessory use to the principal business.

-----  
Meeting adjourned at 3:40 p.m.

Robert A. Lakin  
Secretary

State of Kansas


ss

Sedgwick County

I, Robert A. Lakin, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the Minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission held on June 24, 1971, is a true and correct copy of the Minutes officially approved by such Commission.

GIVEN under my hand and official seal this 23rd day of July, 19 71.

(SEAL)

  
Robert A. Lakin, Secretary  
Wichita-Sedgwick County Metro-  
politan Area Planning Commission

~~Deed~~  
OK J.S.

RESTRICTIVE COVENANTS

THE UNDERSIGNED, A. J. KING, being the sole owner of the following described property, to-wit:

Lots 1, 2 and 3 and Lots 22, 23 and 24, Block 2, Kellogg Heights Addition to the City of Wichita, Sedgwick County, Kansas, and upon replatting and recording to be known as "Perdel Addition" to the City of Wichita, Sedgwick County, Kansas;

does hereby declare this 3rd day of August, 1971:

W I T N E S S E T H:

WHEREAS, the above described property is in the process of being zoned "LC" Light Commercial; and

WHEREAS, the undersigned in connection therewith desires to make the following declarations of restrictions and limitations as to how said property may be utilized, hereby specifying that such declarations and restrictions shall constitute covenants running with the land for the purpose of setting forth requirements upon which the undersigned and his successors in title are governed, which requirements, limitations and restrictions shall be for the benefit of those persons who own property within ~~two~~ <sup>four</sup> hundred

OK 8-11-71

<sup>(400)</sup>  
~~(200)~~ feet of the captioned property;

OK 8-11-71

NOW, THEREFORE, the undersigned, A. J. King, does hereby declare that the following will be complied with by the undersigned on the said described property:

Lots 1, 2 and 3 and Lots 22, 23 and 24, Block 2, Kellogg Heights Addition to the City of Wichita, Sedgwick County, Kansas, and upon replatting and recording to be known as "Perdel Addition" to the City of Wichita, Sedgwick County, Kansas.

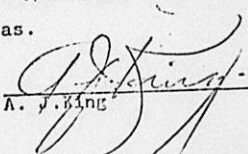
1. Any development of said property consistent with the "LC" zoning will have and require 5'-8' fence constructed either of redwood, plastic, and/or cedar, or similar non-see-through material along the south line of said property along with landscape screening of deciduous and coniferous shrubs placed along said fence.

2. For a period of ten (10) years from June 1, 1971, the development and use of the property shall exclude a retail food or beverage business but shall not exclude the sale of food or beverage as an accessory use to the principal business.

The above covenants, conditions, and limitations shall run with the land and be binding upon the present owner, his successors, trustees and assigns, and all parties claiming by, through or under him.

In the event the owner of said property as above set forth, or his successors in interest or assigns, shall violate or attempt to violate any of the conditions, covenants, and limitations as above set forth, it shall be lawful for those property owners within <sup>four</sup> ~~two~~ hundred <sup>(400)</sup> ~~(200)~~ feet of the *OK 2-11-71* captioned property and the City of Wichita to prosecute any proceeding at law or in equity against said party or parties violating or attempting to violate any such covenants, limitations, or conditions either to prevent them from doing so or to compel compliance therewith.

IN WITNESS WHEREOF, the said owner and grantor of these limitations, conditions, covenants and restrictions has executed this declaration the day and year above written in Wichita, Sedgwick County, Kansas.

  
A. J. King

STATE OF KANSAS )  
SEDGWICK COUNTY ) ss:

BE IT REMEMBERED that on this 3<sup>rd</sup> day of August, 1971, before me, a notary public in and for said County and State, came A. J. King, who is personally known to me to be the same person who executed the foregoing Restrictive Covenants, and such person duly acknowledged the execution of the same as his free and voluntary act and deed, for the uses and purposes therein set out.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Maureen Kennedy  
Notary Public



Commission expires: March 10, 1975

August 9, 1971

Mr. Ken Stewart  
1030 First National Bank Building  
Wichita, Kansas 67202

Subject: Restrictive Covenants required  
with Zone Case No. Z-1203 and Final Plat  
of Perdel Addition

Dear Mr. Stewart:

Attached is the amended copy of the restrictive covenants associated  
with the above captioned plat. Consideration of this plat is on  
tomorrow's City Commission agenda.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ls  
Attachment

cc Orlin L. Wagner, Beacon Building 67202

August 9, 1971

John Dekker, Director of Law

Jack H. Galbraith, Chief Planner

Restrictive Covenants required with Zone Case No. Z-1203  
and final plat of Perdel Addition

Your files will indicate that on August 3, 1971, we forwarded you a copy of restrictive covenants submitted with the above captioned plat. Inasmuch as the attorney representing the opposition did not agree with the format of the covenants, the applicat's attorney, George Powers, has amended the covenants. Attached for your information is a revised covenant for the plat of Perdel Addition, which is on tomorrow's City Commission agenda.

JHG:ls  
Attachment

~~Perdel~~  
OK J.H.S

RESTRICTIVE COVENANTS

THE UNDERSIGNED, A. J. KING, being the sole owner of the following described property, to-wit:

Lots 1, 2 and 3 and Lots 22, 23 and 24, Block 2, Kellogg Heights Addition to the City of Wichita, Sedgwick County, Kansas, and upon replatting and recording to be known as "Perdel Addition" to the City of Wichita, Sedgwick County, Kansas;

does hereby declare this 3<sup>rd</sup> day of August, 1971:

W I T N E S S E T H:

WHEREAS, the above described property is in the process of being zoned "LC" Light Commercial; and

WHEREAS, the undersigned in connection therewith desires to make the following declarations of restrictions and limitations as to how said property may be utilized, hereby specifying that such declarations and restrictions shall constitute covenants running with the land for the purpose of setting forth requirements upon which the undersigned and his successors in title are governed, which requirements, limitations and restrictions shall be for the benefit of those persons who own property within ~~two~~ <sup>four</sup> hundred ~~two~~ <sup>four</sup> hundred ~~two~~ <sup>four</sup> feet of the captioned property;

OK 8-11-71

OK 8-11-71

NOW, THEREFORE, the undersigned, A. J. King, does hereby declare that the following will be complied with by the undersigned on the said described property:

Lots 1, 2 and 3 and Lots 22, 23 and 24, Block 2, Kellogg Heights Addition to the City of Wichita, Sedgwick County, Kansas, and upon replatting and recording to be known as "Perdel Addition" to the City of Wichita, Sedgwick County, Kansas.

STATE OF KANSAS )  
                  ) ss:  
SEDGWICK COUNTY )

BE IT REMEMBERED that on this 3<sup>rd</sup> day of August, 1971, before me, a notary public in and for said County and State, came A. J. King, who is personally known to me to be the same person who executed the foregoing Restrictive Covenants, and such person duly acknowledged the execution of the same as his free and voluntary act and deed, for the uses and purposes therein set out.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Maizone Kennedy  
Notary Public



Commission expires: March 10, 1975

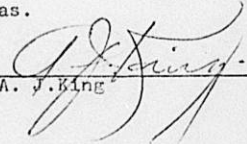
1. Any development of said property consistent with the "LC" zoning will have and require 5'-8' fence constructed either of redwood, plastic, and/or cedar, or similar non-see-through material along the south line of said property along with landscape screening of deciduous and coniferous shrubs placed along said fence.

2. For a period of ten (10) years from June 1, 1971, the development and use of the property shall exclude a retail food or beverage business but shall not exclude the sale of food or beverage as an accessory use to the principal business.

The above covenants, conditions, and limitations shall run with the land and be binding upon the present owner, his successors, trustees and assigns, and all parties claiming by, through or under him.

In the event the owner of said property as above set forth, or his successors in interest or assigns, shall violate or attempt to violate any of the conditions, covenants, and limitations as above set forth, it shall be lawful for those property owners within ~~two~~<sup>four</sup> hundred ~~(200)~~<sup>(400)</sup> feet of the *OK 2-11-71* captioned property and the City of Wichita to prosecute any proceeding at law or in equity against said party or parties violating or attempting to violate any such covenants, limitations, or conditions either to prevent them from doing so or to compel compliance therewith.

IN WITNESS WHEREOF, the said owner and grantor of these limitations, conditions, covenants and restrictions has executed this declaration the day and year above written in Wichita, Sedgwick County, Kansas.

  
A. J. King

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO  
BOARD OF CITY COMMISSIONERS

SUBDIVISION APPROVAL

S/D Number	71-21	Name	PERDEL ADDITION	
Application Filed:	4-5-71	Sketch Filed:		4-5-71
Preliminary Plat Filed:	None	Approved by S/D:		N/A
Final Plat Filed:	4-5-71	Approved by S/D:		4-15-71
Approved by Metropolitan Area Planning Commission:				4-22-71

DESCRIPTION

General Location: South side of Kellogg in an area  
between Pershing and Dellrose

Surveyor or Engineer: Baughman Company  
Owner: A. J. King  
Address: 1807 East Douglas 67211

1. Gross Acreage of Plat	0.9	5. Lineal Feet of New Streets:	
2. Number of Lots:		a. 10 R/W	270 ft.
Residential		b. R/W	ft.
Commercial	2	c. R/W	ft.
Industrial		d. R/W	ft.
Other		e. R/W	ft.
Total Number of Lots:	2	TOTAL	270 ft.
3. Minimum Lot Frontage:	130 ft.	6. Existing Zoning:	"A"
4. Minimum Lot Area	18,200 sq.ft.		

Valid petitions have been submitted guaranteeing the construction of a sidewalk on the east side of Pershing Avenue and reconstruction of the sidewalk on the south side of Kellogg adjacent to the new property line. A certificate has also been submitted certifying the petitions.

**Planning Commission Recommendation:**

JACKSON moved and KAMEN seconded that the Planning Commission recommend to the City Commission that this plat be approved, subject to:

1. In consideration of the associated Case Z-1203 by the Planning Commission, the applicant offered voluntary restrictive covenants guaranteeing fencing and landscaped screening along the south side of subject property, and that such covenants would also guarantee that the development of the property would exclude retail food or beverage businesses for a period of ten years. The applicant shall submit such restrictive covenants affording these assurances in conjunction with the development of the property, said covenant to be submitted for forwarding with the final plat to the Board of City Commissioners.

2. Recording of the plat within 30 days after approval by the Board of City Commissioners.

NOTE: The associated zone Case Z-1203, "A" to "LC", was approved by the Board of City Commissioners on September 22, 1970, subject to replatting.

Vote of Planning Commission: Unanimous.

**ACTION:** Approve the petitions and instruct the Director of Law to prepare the necessary resolutions, instruct the City Clerk to file the certificate and restrictive covenants with the Register of Deeds, the publication and filing costs of which shall be billed to the applicant; and approve the plat as approved by the Metropolitan Area Planning Commission and authorize the Mayor to sign.

GEORGE B. POWERS  
JOHN F. EBERHARDT  
STUART R. CARTER  
ROBERT C. FOULSTON  
MALCOLM HILLET  
ROBERT N. PARTIDGE  
ROBERT W. SIEFKIN  
RICHARD C. HARRIS  
GERALD SAMATZY  
DONALD L. CORDES  
ROBERT L. HOWARD  
CHARLES J. WOODIN  
NIKEL L. STOUT  
BENJAMIN C. LANDEL  
JERRY G. ELLIOTT  
WILLIAM H. DYE  
PHILIP B. FRICK  
JOHN E. FOULSTON  
STANLEY G. ANDEEL  
FREDERICK L. HAAG  
RICHARD D. EMY  
DAVID G. CROCKETT

LAW OFFICES  
FOULSTON, SIEFKIN, POWERS & EBERHARDT

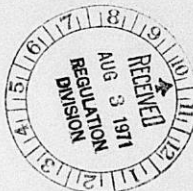
SUITE 600 FOURTH NATIONAL BANK BUILDING

WICHITA, KANSAS 67202

TELEPHONE 267-6371, AC 316

August 3, 1971

TITLE OPINION



ROBERT C. FOULSTON (1889-1947)  
GEORGE SIEFKIN (1888-1954)  
PAUL H. WHITE  
OF COUNSEL

THE CITY OF WICHITA:

This is to certify that we have examined the title to the following described property:

Lots 1, 2 and 3 and Lots 22, 23 and 24,  
Block 2, Kellogg Heights Addition to  
the City of Wichita, Sedgwick County,  
Kansas, and upon replatting and recording  
to be known as "Perdel Addition" to the  
City of Wichita, Sedgwick County, Kansas;


and certify that on this date there is good title to said property in:

A. J. KING

subject to a lien as shown by a mortgage to The Wichita Federal Savings and Loan Association of Wichita, Kansas, which mortgage is filed of record and constitutes a first lien on the property.

The undersigned further certifies that they have examined the records and real estate taxes for the year 1970 are paid in full.

Dated this 3rd day of August, 1971.

  
George B. Powers

of FOULSTON SIEFKIN POWERS & EBERHARDT

GBP:dgl

**CERTIFICATE**

City of Wichita)  
Sedgwick County) ss  
State of Kansas)

I, A. KING, owner and plat-  
tor of PER DEL ADDITION Addition, do hereby  
certify that petitions for the following improvements have been  
submitted to the Board of Commissioners of the City of Wichita,  
Kansas:

1. - *Sidewalk Petition - South side of alley - lot 112*
2. *Sidewalk Petition - East side of Poshing - lot - 1*
- 3.
- 4.
- 5.
- 6.
- 7.

As a result of the above-mentioned petitions for im-  
provements, lots within PER DEL ~~ADDITION~~ Addition  
may be subject to special assessments assessed thereto for the  
cost of constructing the above-described improvements.

Signed this 2<sup>nd</sup> day of August, 1971.

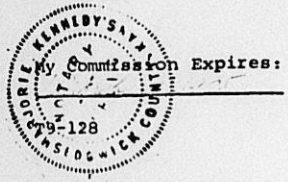
*A. King*  
*Alvin James King*

City of Wichita)  
Sedgwick County) ss  
State of Kansas)

Be it remembered that on this 2<sup>nd</sup> day of August,  
1971, before me, a notary public in and for said County and State,  
came *A. King and Alvin James King*, to me personally  
known to be the same person who executed the fore-going instrument  
of writing and duly acknowledged the execution of same.

In Testimony Whereof, I have hereunto set my hand and  
affixed my notarial seal the day and year above written.

*Marvin Kennedy*  
Notary Public



RESTRICTIVE COVENANTS

*Voided*

THE UNDERSIGNED, A. J. KING, being the sole owner of the following described property, to-wit:

Lots 1, 2 and 3 and Lots 22, 23 and 24, Block 2, Kellogg Heights Addition to the City of Wichita, Sedgwick County, Kansas, and upon replatting and recording to be known as "Perdel Addition" to the City of Wichita, Sedgwick County, Kansas;

does hereby declare this 31<sup>st</sup> day of August, 1971:

W I T N E S S E T H:

WHEREAS, the above described property is in the process of being zoned "LC" Light Commercial; and

WHEREAS, the undersigned in connection therewith desires to make the following declarations of restrictions and limitations as to how said property may be utilized, hereby specifying that such declarations and restrictions shall constitute covenants running with the land for the purpose of setting forth requirements upon which the undersigned and their successors in title are governed, which requirement, limitations and restrictions shall be for the benefit of those persons who own property within two hundred (200) feet of the captioned property;

NOW, THEREFORE, the undersigned, A. J. King, does hereby declare that the following will be complied with by the undersigned on the said described property:

Lots 1, 2 and 3 and Lots 22, 23 and 24, Block 2, Kellogg Heights Addition to the City of Wichita, Sedgwick County, Kansas, and upon replatting and recording to be known as "Perdel Addition" to the City of Wichita, Sedgwick County, Kansas.

1. Any development of said property consistent with the "LC" zoning will have and require 5'-8' fence constructed either of redwood, plastic, and/or cedar, or similar non-see-through material along the south line of said property along with landscape screening of deciduous and coniferous shrubs placed along said fence.

2. For a period of ten (10) years from June 1, 1971, the property will not be developed or used for any business in which the principal business is the retail sale of food or beverage.

The above covenants, conditions, and limitations shall run with the land and be binding upon the present owner, his successors, trustees and assigns, and all parties claiming by, through or under him; provided, however, these restrictive covenants may be altered, modified, or changed by action of the Board of City Commissioners of the City of Wichita, upon a proper hearing therefor.

In the event the owner of said property as above set forth, or his successors in interest or assigns, shall violate or attempt to violate any of the conditions, covenants, and limitations as above set forth, it shall be lawful for those property owners within two hundred (200) feet of the captioned property and the City of Wichita to prosecute any proceeding at law or in equity against said party or parties violating or attempting to violate any such covenants, limitations, or condition either to prevent them from doing so or to compel compliance therewith.

IN WITNESS WHEREOF, the said owner and grantor of these limitations, conditions, covenants and restrictions has

executed this declaration the day and year above written in  
Wichita, Sedgwick County, Kansas.

  
A. J. King

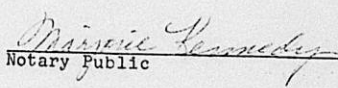
\*\*\*\*\*

STATE OF KANSAS     )  
                          )     ss:  
SEDGWICK COUNTY    )

BE IT REMEMBERED that on this 7<sup>th</sup> day of August,  
1971, before me, a notary public in and for said County and  
State, came A. J. King, who is personally known to me to be  
the same person who executed the foregoing Restrictive  
Covenants, and such person duly acknowledged the execution of the  
same as his free and voluntary act and deed, for the uses and  
purposes therein set out.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
and affixed my official seal, the day and year last above  
written.



  
Notary Public

Commission expires:

March 19, 1975

August 3, 1971

John Dekker, Director of Law

Jack H. Galbraith, Chief Planner

Restrictive Covenants required with zone case No. Z-1203  
and final plat of Perdel Addition

Attached is a copy of the restrictive covenants submitted as a condition of approval for the above captioned zone case which was approved by the City Commission on September 22, 1970. The plat of Perdel Addition has been scheduled for the meeting of the City Commission on August 10, 1971; and these covenants should be received and filed and recorded with the Register of Deeds. These covenants are provided for your information.

JHG:ls  
Attachment

August 3, 1971

Mr. Robert L. Smith  
1030 1st National Bank Building  
Wichita, Kansas 67202

Subject: Restrictive Covenants required  
with zone case No. Z-1203 and final plat  
of Perdel Addition

Dear Mr. Smith:

At your request, attached is a copy of the restrictive covenants required as a condition of approval for the above captioned zone case. The applicant has met all the conditions relative to platting and the plat of Perdel Addition will be forwarded to the Board of City Commissioners for their consideration next Tuesday, August 10, 1971.

If you have any questions, please contact our office.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ls  
Attachment  
cc Orlin L. Wagner, Beacon Building 67202

August 2, 1971

Mr. A. J. King  
1807 East Douglas  
Wichita, Kansas 67211

Subject: Z-1203 - Zone change from  
"A" to "LC" and S/D 71-21 - Perdel  
Addition. Generally located on the  
south side of Kellogg between Pershing  
and Dellrose.

Dear Mr. King:

As you will recall, the above captioned zone case was approved by the Metropolitan Area Planning Commission on August 27, 1970 and by the Board of City Commissioners on September 22, 1970. The action of the governing body was to approve the zone change request subject to the application area being replatted within one year from the date of approval by the Board of City Commissioners; and that in the event the plat is not recorded with the Register of Deeds within one year from the date of approval of the governing body, this zone case is considered denied and closed.

On April 5, 1971, a plat called Perdel Addition was filed on subject property and was approved by the Metropolitan Area Planning Commission on April 22, 1971 subject to certain conditions.

This is to advise you that the one year time limit on zone case Z-1203 will expire on September 22, 1971 and in the event the plat of Perdel Addition has not been recorded by the expiration date, based on the action of the governing body, zone case Z-1203 and S/D 71-21 - Perdel Addition will be marked "denied and closed".

Page 2 - A. J. King  
August 2, 1971

We would appreciate your contacting our office at your earliest convenience and advising us as to your intent to complete the platting of subject property.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:CLN:ls  
cc George Powers, Attorney  
4th National Bank Building 67202  
Baugman Company  
2522 East Kellogg 67211

July 28, 1971

Mr. George Powers, Attorney  
4th National Bank Building  
Wichita, Kansas 67202

Re: Restrictive Covenants Required  
with Zoning Case Z-1203 and  
Final Plat of Perdel Addition

Dear Mr. Powers:

As we discussed this morning by phone, attached is the submitted draft covenant that Mr. Siefkin left in our office last week. I have reviewed this with Bob Lakin and he suggests including the word "any" preceding retail food in Condition #2. Also, regarding the fencing and landscaping on the south property line, we would suggest that Condition #1 be reworded as follows:

- "1. Any development of said property consistent with the light commercial zoning will have and require a 5-8 foot fence constructed either of redwood, plastic and/or cedar, or similar non-see-through material along the south line of said property along with landscape screening of deciduous and coniferous trees and shrubs placed along said fence."

In my letter to you on June 25, 1971, I cautioned that subject plat must be recorded with the Register of Deeds no later than September 22, 1971, or subject zone case would be marked denied and closed.

Prior to our being able to forward the plat to the City Commission for their consideration, we need this covenant corrected and executed and returned to our office so that it may be forwarded with the plat to the City Commission for recording. We also need a sidewalk guarantee meeting Condition #5 in our letter of April 19, 1971, copy of which is attached. We also need a corrected and signed tracing and title and tax opinion as outlined in our letter of April 23, 1971, copy of which is attached.

Page 2 - Mr. George Powers  
July 28, 1971

If you have any questions concerning this matter, please contact  
our office.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ber

Attachments

cc: Robert Siefkin, 4th National Bank Building 67211  
A. J. King, 1807 East Douglas 67211  
Baughman Company, 2522 East Kellogg 67211

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

June 25, 1971

TO John D. Gist, Principal Planner  
FROM Jack H. Galbraith, Chief Planner *JHG*  
SUBJECT Z-1203 - "A" to "LC" - South side of  
Kellogg between Pershing and Dellrose

After yesterday's meeting, Bob Smith, an attorney representing the opposition, requested that at such time as the covenants are submitted that he and Orlin Wagner be furnished a copy for their review prior to our forwarding the plat to the Board of City Commissioners.

JHG:ber

*7/21/71  
Called Wagner this date and he  
is out of the City until Aug 2, 1971. *JHG*  
Smith is to return my call*

*file*

May 11, 1971

Mr. A. J. King  
1807 East Douglas  
Wichita, Kansas 67211

Subject: S/D 71-21 - Final Plat  
of PERDEL ADDITION (Voluntary  
restrictive covenants required  
in the approval of associated zone  
case Z-1203).

Dear Mr. King:

You will recall my previous correspondence dated April 19, 1971, wherein we setforth the conditions established by the Subdivision Committee in their recommending approval of your final plat on April 15, 1971. Condition number four in said letter deals with the applicant submitting his voluntary restrictive covenants which were required in consideration of the associated zone case Z-1203.

One day last week you submitted a set of restrictive covenants as your attempt in satisfying the above referred to condition. We have reviewed these covenants and we feel there are certain items which need changing or added to your submission, which are as follows:

1. In the first paragraph following the description of the real estate involved, reference should be made to said property which is now in the process of being replatted which upon recording will be known as Perdel Addition, Wichita, Kansas.
2. In the second paragraph your reference to the duration of the voluntary restrictive covenants being applicable for a period of ten years should be extracted and placed later within the text as being applicable only to that provision of the covenants which excludes the property from being developed with businesses involving the retail sale of food and beverages. The covenant relative to screening and landscaping along the south property line is a continuing requirement that the Planning Commission did not limit to just a ten year period.

3. The provision dealing with the fencing and landscaping along the south property line should be further expanded to specify the height of the fence to be provided (5 to 8 feet), the alternate types of materials that will be utilized to construct said fence, and to specify the types and location of landscape materials which will be used. This expansion of the wording will also eliminate the need for attaching a sketch or landscape plan, and the wording giving reference to the attachment can be deleted.

*ck* It was the action of the Planning Commission that the restrictive covenants also guarantee that the development of subject property shall exclude a retail food or beverage business for a period of ten years. Your wording of the covenant deals specifically with the use of the property for a drive-in type of facility or restaurant dealing in or selling foods and beverages. We recommend that this provision be reworded so as to exclude a retail food or beverage business dealing with the sale for carryout, or consumption on the premises, of prepared foods and beverages.

*ck* These restrictive covenants should also give reference to them constituting a covenant running with the land for the purpose of setting forth requirements upon which the present owner, their assigns<sup>1</sup> successors in title are governed.

*ck* The covenants should also specify that the limitations and restrictions set forth by them shall be for the benefit of the City of Wichita and those persons who own property within 200 feet of the captioned property being restricted.

Enclosed herewith you will find that we are returning your originally submitted restrictive covenant along with the copy of the sketch plat as prepared by Baughman Company on which you had indicated a proposal for the fencing and landscaping. Also please find a copy of another restrictive covenant which has been used on a different case setting forth different types of covenants, limitations and restrictions. This copy can be used as a sample giving you a good idea of the format to be used, and as to specific language covering some of the items outlined above. We suggest that after you have redrafted the covenant that you submit it to the Planning Department for our review and approval, prior to the execution of the final copy and returning of same to the Planning Department.

Page 3  
May 11, 1971

If you have any questions concerning this matter, please contact our office.

Very truly yours,

John D. Gist  
Principal Planner

JDG:rme

Enclosures

④<sup>b</sup> Covenants enforceable by?

① Now in the process of being  
replatted as Parcel Addition,  
Wichita, Kansas

② separate 10 year term limit  
to apply only to that portion  
of covenants regarding ~~that~~  
retail food or beverage  
business.

③ further define fencing to be  
provided as to materials and  
height

④ Avoid reference to an attached  
sketch?

⑤ #2 talks only of drive-in  
facility or restaurant  
selling food & beverage where  
PC did not give just this

⑥ <sup>5 distinction</sup> Covenants running with the land

RESTRICTIVE COVENANTS

STATE OF KANSAS        )  
                          ) ss:  
COUNTY OF SEDGWICK )

A. J. KING, being the sole, titled owner of the following described real estate, to wit:

Lots 1, 2 & 3 and Lots 22, 23 & 24,  
Block 2, Kellogg Heights Addition to  
the City of Wichita, Sedgwick County,  
Kansas,

Does for the purpose of obtaining "LC" zoning on said property hereby agree to the following voluntary restrictions on said property for a period of ten (10) years (June 1, 1971 to May 31, 1981, as follows:

1. Any development of said property will have and require the south line of said property to be fenced and there will be landscape screening the same as or similar to a sketch attached to these covenants.
2. The property will not be developed or used for a drive-in type of facility or restaurant dealing in or selling foods and beverages.

WITNESS my hand this 26 day of April, 1971.

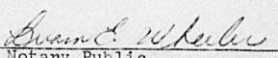
STATE OF KANSAS        )  
                          ) ss:  
SEDGWICK COUNTY        )

  
\_\_\_\_\_  
A. J. King

BE IT REMEMBERED, that before me, a notary public in and for said County and State, came A. J. King, who is personally known to me to be the same person who executed the foregoing Restrictive Covenants, and said person duly acknowledged the execution of the same for the uses and purposes therein set out.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal on this 26<sup>th</sup> day of April, 1971.



  
\_\_\_\_\_  
Notary Public

\* \* \*  
\*

RESTRICTIVE COVENANTS

STATE OF KANSAS        )  
                          ) ss:  
COUNTY OF SEDGWICK    )

A. J. KING, being the sole, titled owner of the following described real estate, to wit:

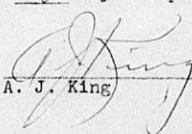
Lots 1, 2 & 3 and Lots 22, 23 & 24,  
Block 2, Kellogg Heights Addition to  
the City of Wichita, Sedgwick County,  
Kansas,

Does for the purpose of obtaining "LC" zoning on said property hereby agree to the following voluntary restrictions on said property for a period of ten (10) years (June 1, 1971 to May 31, 1981, as follows:

1. Any development of said property will have and require the south line of said property to be fenced and there will be landscape screening the same as or similar to a sketch attached to these covenants.
2. The property will not be developed or used for a drive-in type of facility or restaurant dealing in or selling foods and beverages.

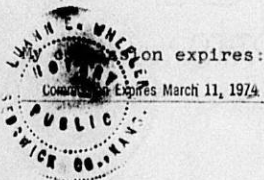
WITNESS my hand this 26 day of April, 1971.

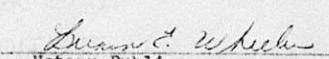
STATE OF KANSAS        )  
                          ) ss:  
SEDGWICK COUNTY        )

  
A. J. King

BE IT REMEMBERED, that before me, a notary public in and for said County and State, came A. J. King, who is personally known to me to be the same person who executed the foregoing Restrictive Covenants, and said person duly acknowledged the execution of the same for the uses and purposes therein set out.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal on this 26<sup>th</sup> day of April, 1971.



  
Notary Public

\* \* \*  
\*

*Required on zone  
cases to limit  
use of property.*

**FOR SAMPLE  
PURPOSES ONLY**

RESTRICTIVE COVENANTS

We, the undersigned, ROBERT McARTHUR and PATRICIA McARTHUR, his wife, owners of the following described property, to-wit:

The West One Hundred Feet (W 100')  
of Lot Twenty-eight (28) in GILDER'S  
RIVERSIDE ADDITION, Sedgwick County,  
Kansas,

do hereby declare this 18<sup>th</sup> day of September, 1969:

W I T N E S S E T H:

WHEREAS, the above described property is in the process of being zoned "LC" Light Commercial, and

WHEREAS, the undersigned contemplate maintenance and operation of a gasoline service station, and

WHEREAS, the undersigned in connection therewith desire to make the following declarations of restrictions and limitations as to how said property may be utilized, hereby specifying that such declarations and restrictions shall constitute covenants running with the land for the purpose of setting forth requirements upon which the undersigned and their successors in title are governed, which requirements, limitations and restrictions shall be for the benefit of those persons who own property within two hundred (200) feet of the captioned property.

NOW, THEREFORE, the undersigned, ROBERT McARTHUR and PATRICIA McARTHUR do hereby declare that the following will be complied with by the undersigned on the above described property:

The West One Hundred Feet (W 100')  
of Lot Twenty-eight (28) in GILDER'S  
RIVERSIDE ADDITION, Sedgwick County,  
Kansas,

for a period of twenty (20) years or such lesser period of time as such restrictions or covenants may be modified or changed by action of the Board of City Commissioners of the City of

Wichita, as hereinafter set forth. That such restrictions and covenants are as follows:

SAMPLE

That said West One Hundred Feet (W 100') of Lot Twenty-eight (28), GILDER'S RIVERSIDE ADDITION, Sedgwick County, Kansas, shall be used only for the purpose of operating and maintaining an automobile service station for the sale of light petroleum products, tires, batteries and accessories.

The above covenants, conditions and limitations shall run with the land and be binding upon the present owners, their successors, trustees and assigns, and all parties claiming by, through or under them, for twenty (20) years; provided, however, that these restrictive covenants may be altered, modified or changed by action of the Board of City Commissioners of the City of Wichita, upon a proper hearing therefor.

In the event the owners of said property as above set forth or their successors in interest or assigns shall violate or attempt to violate any of the conditions, covenants and limitations as above set forth, it shall be lawful for those property owners within two hundred (200) feet of the captioned property and the City of Wichita to prosecute any proceeding at law or in equity against said party, or parties violating or attempting to violate any such covenants, limitation or condition either to prevent them from doing so or to compel compliance therewith.

IN WITNESS WHEREOF, the said owners and grantors of these limitations, conditions, covenants and restrictions have executed this declaration on the day and year above written in Wichita, Sedgwick County, Kansas.

X Robert E. McArthur  
Robert McArthur

X Patricia E. McArthur  
Patricia McArthur

SAMPLE

STATE OF KANSAS )  
                          ) SS.  
COUNTY OF SEDGWICK )

Before me, the undersigned, a Notary Public, within and for said County and State, on this 18th day of September, 1969, personally appeared ROBERT McARTHUR and PATRICIA McARTHUR, his wife, to me personally known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

Ray L. Coey  
Notary Public

My commission expires: July 9, 1971



*Required on zone  
case to limit  
use of property.*

*SAMPLE*

RESTRICTIVE COVENANTS

We, the undersigned, ROBERT McARTHUR and PATRICIA McARTHUR, his wife, owners of the following described property, to-wit:

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do hereby declare this 18<sup>th</sup> day of September, 1969:

W I T N E S S E T H:

WHEREAS, the above described property is in the process of being zoned "LC" Light Commercial, and

WHEREAS, the undersigned contemplate maintenance and operation of a gasoline service station, and

WHEREAS, the undersigned in connection therewith desire to make the following declarations of restrictions and limitations as to how said property may be utilized, hereby specifying that such declarations and restrictions shall constitute covenants running with the land for the purpose of setting forth requirements upon which the undersigned and their successors in title are governed, which requirements, limitations and restrictions shall be for the benefit of those persons who own property within two hundred (200) feet of the captioned property.

NOW, THEREFORE, the undersigned, ROBERT McARTHUR and PATRICIA McARTHUR do hereby declare that the following will be complied with by the undersigned on the above described property:

The West One Hundred Feet (W 100') of Lot Twenty-eight (28) in GILDER'S RIVERSIDE ADDITION, Sedgwick County, Kansas,

for a period of twenty (20) years or such lesser period of time as such restrictions or covenants may be modified or changed by action of the Board of City Commissioners of the City of

Wichita, as hereinafter set forth. That such restrictions and covenants are as follows:

That said West One Hundred Feet (W 100') of Lot Twenty-eight (28), GILDER'S RIVERSIDE ADDITION, Sedgwick County, Kansas, shall be used only for the purpose of operating and maintaining an automobile service station for the sale of light petroleum products, tires, batteries and accessories.

The above covenants, conditions and limitations shall run with the land and be binding upon the present owners, their successors, trustees and assigns, and all parties claiming by, through or under them, for twenty (20) years; provided, however, that these restrictive covenants may be altered, modified or changed by action of the Board of City Commissioners of the City of Wichita, upon a proper hearing therefor.

In the event the owners of said property as above set forth or their successors in interest or assigns shall violate or attempt to violate any of the conditions, covenants and limitations as above set forth, it shall be lawful for those property owners within two hundred (200) feet of the captioned property and the City of Wichita to prosecute any proceeding at law or in equity against said party, or parties violating or attempting to violate any such covenants, limitation or condition either to prevent them from doing so or to compel compliance therewith.

IN WITNESS WHEREOF, the said owners and grantors of these limitations, conditions, covenants and restrictions have executed this declaration on the day and year above written in Wichita, Sedgwick County, Kansas.

X Robert McArthur  
Robert McArthur

X Patricia E. McArthur  
Patricia McArthur

STATE OF KANSAS )  
 ) SS.  
COUNTY OF SEDGWICK )

Before me, the undersigned, a Notary Public, within and for said County and State, on this 18th day of September, 1969, personally appeared ROBERT McARTHUR and PATRICIA McARTHUR, his wife, to me personally known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

Roy L. Corey  
Notary Public

My commission expires: July 9, 1971



THE CITY OF WICHITA

OFFICE OF Ass't. Supt. of Public  
Works Maintenance

DATE May 6, 1971



TO John Gist, Principal Planner

FROM M. S. Mitchell

SUBJECT - Perdel Addition - Sketch plat  
SD 71-21

Reference is made to my request before the Subdivision Committee for a drainage plan for subject addition. Please be advised that we have received a plan showing the subject lots will be graded to drain to the streets when developed, and this plan is acceptable.

I trust this information is sufficient to permit final processing of the plat; if, however, further information is desired, please advise.

A handwritten signature in cursive script that reads "M. S. Mitchell".

M. S. Mitchell,  
Ass't. Superintendent of  
Public Works Maintenance

MSM/glm

cc: G. H. Wilton, Supt. of Public Works Maint.  
Perdel Addition  
Tom Byrnes, Central Inspection, w/copy of plat



April 23, 1971

Baughman Company  
2522 East Kellogg  
Wichita, Kansas 67211

Re: S/D 71-21 - Final Plat of  
PERDEL ADDITION

Gentlemen:

At the regular meeting of the Metropolitan Area Planning Commission on April 22, 1971, the above-captioned plat was considered. The action of the Commission was to recommend that the plat be approved as recommended by the Subdivision Committee, subject to the conditions stated in our letter of April 19, 1971.

In addition to complying with those conditions, it is necessary that you meet the following requirements before this plat can be forwarded to the Board of City Commissioners for consideration:

- 1. *need executed restrictive covenants*  
Compliance with the requirements of the Metropolitan Area Planning Commission.
- JK* Submission of the fully completed and signed tracing of the subdivision to the Metropolitan Area Planning Department.
- JK* Certification by an attorney that fee title is vested in the plattor.
- JK* Certification that all taxes due and payable for 1970 and prior years have been paid.

If you have any questions concerning this matter, please call our office.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ber

cc: A. J. King, 1807 East Douglas 67211

April 19, 1971

Baughman Company  
2522 East Kellogg  
Wichita, Kansas 67211

Subject: S/D 71-21 - Final Plat  
of PERDEL ADDITION

Gentlemen:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, April 15, 1971, the above captioned plat was considered. The action of the Committee was to recommend that this plat be approved, subject to:

*JK* The name being changed in the respective signature block to reflect the new Mayor for the City of Wichita.

*JK* Overall dimensions shall be indicated for the north, south, east and west boundaries of the plat.

*JK* The building setback from Dellrose and Pershing shall be increased from 20 to 25 feet, so as to be in conformance with the front building setback required on the adjacent properties to the south.

4. In consideration of the associated Case Z-1203 by the Planning Commission, the applicant offered voluntary restrictive covenants guaranteeing fencing and landscaped screening along the south side of subject property, and that such covenants would also guarantee that the development of the property would exclude retail food or beverage businesses for a period of ten years. The applicant shall submit such restrictive covenants affording these assurances in conjunction with the development of the property, said covenant to be submitted for forwarding with the final plat to the Board of City Commissioners.

Page 2  
April 15, 1971

- OK* <sup>*petitioned*</sup>  
The applicant shall install or guarantee the construction of a sidewalk on the east side of Pershing, and the reconstruction of a sidewalk adjacent to the new property line on the south side of Kellogg; the total estimated guarantee construction cost to be in the amount of \$1,235.
- OK*  
Indicating a utility easement as follows: 5-foot utility easement on the east side of Lot 1, and a 15-foot utility easement on the west side of Lot 2; or, the applicant shall contact the Engineering Division of the Department of Public Works, the Kansas Gas & Electric and Southwestern Bell Telephone Companies, relative to making satisfactory arrangements for abandonment and/or relocation of the utilities which now exist at this location, and regarding additional utility easements which may be needed because of such relocation and abandonment.
- OK*  
Amending the access control on Kellogg, both on the face of the plat and within the plat's text, to provide for 3 points of access adjacent to subject property. Said access notations to provide for one point of access to each lot, and the third point shall be centered so as to lie common to and serve each lot.
- OK*  
The applicant shall submit a lot grading plan to M. S. Mitchell of the Maintenance Division of the Department of Public Works for approval. A letter shall be obtained approving said plan, which shall be furnished to the Planning Department.
- OK*  
Recording of the plat within 30 days after approval by the Board of City Commissioners.

Enclosed with the applicant's copy of this letter is a list of the five methods which have been adopted as being acceptable for guaranteeing improvements required in the approval of plats. Forms for the bond and irrevocable letter of credit are available from this office.

The enclosed "marked" copy of the final plat is for your information and files.

This matter will be forwarded to the Planning Commission for its consideration on Thursday, April 22, 1971, at 1:30 p.m. If you should have any questions concerning this matter, please call.

Page 3  
April 15, 1971

Very truly yours,

John D. Gist  
Principal Planner

JDG:rme

Enclosure

cc: A. J. King, 1807 East Douglas, 67211

FINAL PLAT  
SUBDIVISION REPORT

SUBDIVISION COMMITTEE  
METROPOLITAN AREA  
PLANNING COMMISSION

S/D NO. 71-21 Name PERDEL ADDITION  
Date Application Rec'd. 4-5-71 Preliminary Approval N/A  
Scheduled S/D Meeting 4-15-71

DESCRIPTION

General Location On the south side of Kellogg in an area between  
Pershing and Dellrose.

Owner A. J. King  
Surveyor/Engineer Baughman Company Phone 683-7431  
Address 2522 East Kellogg

- |   |   |
|---|---|
| 1. Gross Acreage of Plat <u>0.9</u>   | 7. Lineal Feet of New Streets:                                    |
| 2. Number of Lots:  | a. <u>10</u> R/W <u>270</u> ft.                                   |
| Residential _____   | b. _____ R/W _____ ft.  |
| Commercial <u>2</u>   | c. _____ R/W _____ ft.  |
| Industrial _____  | d. _____ R/W _____ ft.  |
| Other _____   | e. _____ R/W _____ ft.  |
| Total Number of Lots <u>2</u>   | TOTAL <u>270</u> ft.  |
| 3. Minimum Lot Frontage <u>130</u> ft.                                      | 8. Sidewalk adjacent to all                                       |
| 4. Minimum Lot Area <u>18,200</u> sq. ft.                                   | streets? <u>yes</u> <input checked="" type="checkbox"/> <u>no</u> |
| 5. Existing Zoning <u>"A"</u>   |   |
| 6. Proposed Zoning <u>"LC"</u>  |   |
| 9. Public Water Supply <u>Yes</u> (Yes-No), Name <u>City of Wichita</u>     |   |
| 10. Public Sanitary Sewers <u>Yes</u> (Yes-No), Name <u>City of Wichita</u> |   |
| 11. Health Department Approval (where applicable) _____ (Yes-No)            |   |
| 12. City of Wichita <u>X</u> : Three-Mile Area _____                        |   |

STAFF COMMENTS:

1. The associated zone case Z-1203, "A" to "LC", has been approved by the Board of City Commissioners on September 22, 1970.
2. The name being changed in the respective signature block to reflect the new Mayor for the City of Wichita.
3. Overall dimensions shall be indicated for the north, south, east and west boundaries of the plat.
4. The building setback from Dellrose and Pershing shall be increased from 20 to 25 feet, so as to be in conformance with the front building setback required on the adjacent properties to the south.
5. The applicant presented a sketch and plot plan of the proposed development to the Planning Commission at the time they considered the associated zone case Z-1203. In that consideration, the applicant offered voluntary restrictive covenants guaranteeing fencing and landscaped screening along the south side of subject property, similar to that proposed in the sketch, and that such covenants would also guarantee that the development of the property would exclude retail food or beverage businesses for a period of ten years. The applicant shall submit such restrictive covenants affording these assurances in conjunction with the development of the property, said covenant to be submitted for forwarding with the final plat to the Board of City Commissioners.
6. The applicant shall install or guarantee the construction of a sidewalk on the east side of Pershing, and the reconstruction of a sidewalk adjacent to the new property line on the south side of Kellogg; the total estimated guarantee construction cost to be in the amount of \$1,235.

(over)

7. The accompanying sketch plat indicates an existing KG&E power line and pole, and a sanitary sewer and manhole, both of which run north and south approximately midway between Lots 1 and 2. It will be necessary to resolve whether said utilities are desired to be abandoned and/or relocated by the applicant, if possible, or in lieu thereof establish an adequate utility easement on the plat for the utilities at their present location.
8. The plat as submitted provides for access control except two openings to each lot on Kellogg. Since this would allow for 4 openings in 270 feet it does not really afford any control or limitation but rather provides for the maximum. The staff would question the possibility of limiting the entire frontage to 3 openings, one of which would be common to and serve each lot, and with secondary access still available to each lot from the side streets.
9. Recording of the plat within 30 days after approval by the Board of City Commissioners.

**NOTE:** This plat has been submitted in final form only, as provided for in Article 4, Part 5, of the MAPC Subdivision Regulations. The Utility Advisory Committee should be prepared to comment on existing utilities and other various improvements, or discuss the feasibility of the applicant extending and/or installing same.

Map No.: 5746  
Section No.: 26  
Twp. No.: 27S  
Range: 1E

S/D No. 71-21

APPLICATION FOR SUBDIVISION APPROVAL

Name of Subdivision: PERDEL ADDITION  
General Location: South side of Kellogg between Dellrose & Paehing  
Name of Property Owner: A. J. King  
Address: 1807 E. Douglas Phone: AM 51481  
Name of Subdivider: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Name of Agent/Surveyor: Baughman Co.  
Address: 2522 E. Kellogg Phone: 683-7431  
Date of Application: April 2, 1971

SUBDIVISION INFORMATION:

- Gross Acreage of Plat 0.9 Ac.
- Number of Lots:
  - Residential \_\_\_\_\_
  - Commercial 2
  - Industrial \_\_\_\_\_
  - Other \_\_\_\_\_Total Number of Lots 2
- Minimum Lot Frontage 130 ft.
- Minimum Lot Area 18,200 ft.
- Existing Zoning CC
- Proposed Zoning CC
- Lineal Feet of New Streets:
  - a. 10 R/W 270 ft.
  - b. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - c. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - d. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - e. \_\_\_\_\_ R/W \_\_\_\_\_ ft.TOTAL 270 ft.
- Sidewalk adjacent to all streets? yes  no
- Public Water Supply yes (Yes-No), Name \_\_\_\_\_
- Public Sanitary Sewers Yes (Yes-No), Name \_\_\_\_\_
- Health Department Approval (where applicable) \_\_\_\_\_ (Yes-No)
- City of Wichita  Three-Mile Area

The owner herein agrees to comply with the Subdivision Regulations for the Wichita-Sedgwick County Metropolitan Area, as approved, and all other pertinent ordinances of the City of Wichita and/or Resolutions of Sedgwick County, Kansas, and Statutes of the State of Kansas. He further agrees that he waives the 60-day statutory period in which the Planning Commission or governing body must act. In addition, it is agreed that all costs of recording the plat and supplemental documents thereto including petitions for improvements such as streets, sewer, sidewalks, etc. with the register of deeds as well as all costs of publication of initiating resolutions approving any petition for improvements shall be assumed and paid by the owner when billed. The undersigned further states that he is the owner of the property proposed for platting.

Owner's Signature: A. J. King

Wichita-Sedgwick County Metropolitan Area  
Planning Commission, Room 402, City Building  
Annex, 104 South Main Street, Wichita, Kansas

Received by: K. Dick  
Date: 4-5-71  
Fee Submitted: \$53.00

T9-301B (10-68)



Form 273-071

PAYMENT NOTICE

City of Wichita

CITY TREASURER'S OFFICE - FIRST FLOOR

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Pibg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

DESCRIPTION	AMOUNT
<i>Permitted Add.</i>	<i>153.00</i>
<i>W. J. Johnson Add</i>	
<i>Don Binning 3rd Add</i>	

Name *William L. Korber*

Address *2522 E. Kellogg*

Type *AA 407104*

Comments:

Date *4-5-71*

By *rme*