

Agenda Item # _____

City of Wichita
City Council Meeting
December 2, 2003

Agenda Report # _____

TO: Mayor and City Council Members

SUBJECT: **ZON2002-00074 – Zone change from “LI” Limited Industrial to “SF-5” Single-family Residential and “NO” Neighborhood Office. Generally located south of 29th Street North and east of Ridge Road. (District V) -- RECONSIDERATION.**

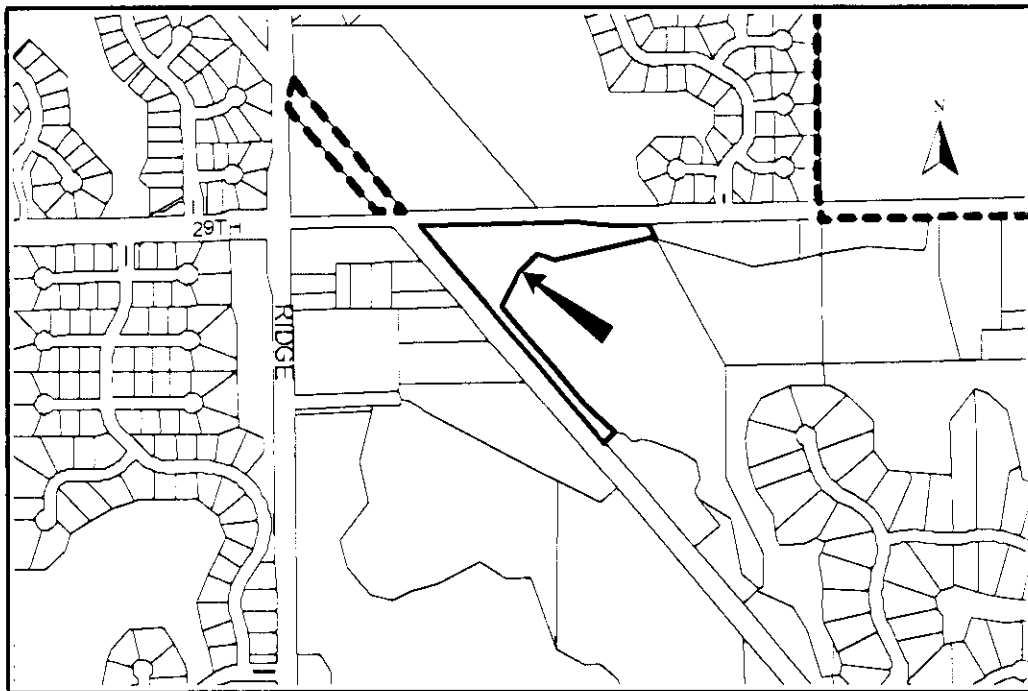
INITIATED BY: Metropolitan Area Planning Department *TLS*

AGENDA ACTION: Planning

MAPC Recommendation: Approve (10-3) subject to platting and a Protective Overlay

D.A.B. Recommendation: Deny (7-0)

Staff Recommendation: Approve subject to platting and a Protective Overlay



BACKGROUND: The City Council denied the rezoning (6-1) on April 15, 2003. The Applicant appealed to District Court, and the matter has been remanded for reconsideration by the City Council.

The applicant originally requested a zone change from "LI" Limited Industrial to "SF-5" Single-Family Residential and "NO" Neighborhood Office on a 5.51 acre unplatted tract located south of 29th Street North and east of Ridge Road. The applicant indicates that the zone change is requested to permit single family residential lots and a home-based office, neither of which is permitted in the "LI" zoning district.

The surrounding area is characterized by a mixture of uses with industrial uses to the west and south and residential uses to the east and north. The properties located south and west of the site are zoned "LI" Limited Industrial and are developed primarily with a cement manufacturing business. Most of the properties located north and east of the site are zoned "SF-5" Single Family Residential are developed with single-family residences. A portion of the lake located east of the site is zoned "LI" Limited Industrial.

A similar zone change request was denied by the City Council in 2001. The applicant appealed the City Council decision in District Court, which upheld the decision of the City Council. The applicant appealed the District Court decision to the Court of Appeals, and the appeal is pending. The applicant subsequently re-filed this zone change request, which is treated as a new zone change request per the re-filing provisions of the zoning code, which allows a new zone change request to be filed one year or more after the original request was denied by City Council.

At the DAB hearing on March 3, 2003, numerous property owners in the vicinity, mostly from the Barefoot Bay neighborhood to the south and east, spoke against the request citing concerns about additional boats accessing the lake and the request being contrary to promises they were made when they purchased their property that the subject property would be one lot and would not be subdivided. The DAB voted 7-0 to recommend denial of the request.

At the MAPC hearing on March 6, 2003, the applicant amended the request to limit the subject property to six residential lots, including one home-based office, and to limit each lot to one boat with a shared boat dock for every two lots, for a total of three boat docks. Numerous property owners from in the vicinity spoke against the request citing the same concerns as presented at the DAB hearing. Numerous letters objecting to the request also were presented at the MAPC hearing. A couple of property owners in the vicinity spoke in favor of the request citing concerns with the types of industrial development that could occur on the property if it were not rezoned. The MAPC voted 10-3 to recommend approval of the request subject to platting the property within one year and subject to the following provisions of a Protective Overlay District:

1. If developed with a residential use, the density of the subject property shall be limited to 6 dwelling units on no more than 6 lots.
2. No more than three boat docks with two boat slips each shall be permitted on the lake from subject property. Each lot on the subject property shall be limited to one watercraft

on the lake at any given time for a total of no more than six watercraft from the subject property.

3. Office use on the portion of the subject property zoned "NO" Neighborhood Office shall be limited to a home occupation as permitted by Section IV-E. of the Unified Zoning Code, except that up to four persons not occupying the dwelling unit may be employed in the home occupation.
4. If consented to by the Barefoot Bay Owners' Association, the subject property shall be subject to "Covenants, Conditions, and Restrictions of Barefoot Bay" as recorded on Film 1479, Pages 0204-0234 or as otherwise agreed to from time to time between the owner of the subject property and the Barefoot Bay Owners' Association.

Protest petitions representing over 75% of the property within 200 feet of the subject property have been received. Numerous protest petitions representing properties more than 200 feet from the subject property also have been received. The amount of property within 200 feet of the subject property owned by the protestors exceeds 20%; therefore, a three-fourths majority vote (6 of 7) of the City Council is required to approve the request.

On reconsideration: The City Council denied the application on April 15, 2003 (6-1). The applicant appealed the matter to District Court under the caption *Michael D. Shell v. The City of Wichita* (Case No. 03 CV 1835). The applicant and the Barefoot Bay Owners' Association have subsequently come to an agreement on several matters including the objections to this application. They jointly request the rezoning to residential use for 3 lots and the provisions of a protective overlay. A Journal Entry has been approved remanding the District Court case to City Council for reconsideration of rezoning based upon the settlement between applicant and homeowners association. If the City Council grants the rezoning, the applicant's appeal in the 2001 case (pending before the Court of Appeals) will also be dismissed.

Under the proposal, a zone change to SF-5 would be approved subject to platting within one-year and protective overlay provisions:

1. If developed with a residential use, the density of the subject property shall be limited to 3 dwelling units on no more than 3 lots.
2. Each lot shall have no more than one dock per lot with no more than one slip per dock. Thus, there will be no more than three docks on the subject property. The owner(s) of each lot shall follow the procedures for dock approval that are applicable to other owners of lots in the Barefoot Bay Owners' Association, and will be subject to the same standards and conditions that have been applied to such other owners of the lots who have docks (with the exception that no dock can have more than one slip);
3. Maximum of one watercraft per lot on the lake at one time;

4. If consented to by the Barefoot Bay Owners' Association, the lots in the subject property shall share a total of two votes on Association and Lake Rule changes, or as otherwise agreed to from time to time between the owner(s) of the subject property and the Barefoot Bay Owners' Association.
5. If consented to by the Barefoot Bay Owners' Association, the subject property shall be subject to "Covenants, Conditions, and Restrictions of Barefoot Bay" as recorded on Film 1479, Pages 0204-0230, and amendment thereto, or as otherwise agreed to from time to time between the owner(s) of the subject property and the Barefoot Bay Owners' Association.

RECOMMENDATION:

Concur with the settlement provisions requested by the applicant and home owners association upon reconsideration and approve the zone change to SF-5 based on the findings contained in the Staff Report, subject to the additional recommended provisions of a Protective Overlay District and subject to the condition of platting within one year; approve first reading of the ordinance.

ORDINANCE NO. 45-953

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

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

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

Case No. ZON2002-00074

Request for zone change from "LI" Limited Industrial to "SF-5" Single-family Residential on property described as:

Lots 1-3, Block A, and Reserve A, Barefoot Bay Estates Addition. Generally located south of 29th Street North and east of Ridge Road.

SUBJECT TO PLATTING WITHIN ONE-YEAR AND THE FOLLOWING PROTECTIVE OVERLAY RESTRICTIONS P. O. #122:

1. If developed with a residential use, the density of the subject property shall be limited to three dwelling units on no more than three lots.
2. Each lot shall have no more than one dock per lot with no more than one slip per dock, with the one slip providing for one water craft. Each lot may only have one water craft either on the water, in a slip, attached or beside the dock, at any one time. Dock dimensions are not to exceed 28 feet in length and 18 feet in width. Thus, there will be no more than three docks on the subject property. The owner(s) of each lot shall follow the procedures for dock approval that are applicable to other owners of lots in the Barefoot Bay Owners' Association, and will be subject to all other standards and conditions that are applied to such other owners of the lots who have docks.
3. Maximum of one watercraft per lot on the lake at one time;
4. If consented to by the Barefoot Bay Owners' Association, the lots in the subject property shall share a total of two votes on Association and Lake Rule changes, or as otherwise agreed to from time to time between the owner(s) of the subject property and the Barefoot Bay Owners' Association.
5. If consented to by the Barefoot Bay Owners' Association, the subject property shall be subject to "Covenants, Conditions, and Restrictions of Barefoot Bay" as recorded on Film 1479, Pages 0204-0230, and amendment thereto, or as otherwise agreed to from

time to time between the owner(s) of the subject property and the Barefoot Bay Owners' Association.

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

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

ADOPTED AT WICHITA, KANSAS, December 2, 2003

Carlos Mayans for
Carlos Mayans, Mayor

ATTEST:

Karen Schofield

Karen Schofield, City Clerk

(SEAL)

Approved as to form:

Gary E. Rebenstorf (794)
Gary E. Rebenstorf, City Attorney