

DR 71-48 - Special Meeting for
Discussion of Liberalizing of
Zoning Ordinance

ACTION

DATE

COMMITTEE

*Forward copies of all
responses & minutes 10-8-71
to BCC*

M.A.F.C.

B.C.C. / *Receipts and file* 11-9-71

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

November 9, 1971

TO MAPC Zoning Advisory Committee

FROM Glen E. Lytle, Secretary *G.E.L.*

SUBJECT Information regarding Board of City Commission request.

At the suggestion of the Planning Director, you are being furnished copies of all information compiled by this Department due to the recent request by the Board of City Commissioners to consider liberalization of zoning in Wichita.

As you will note, copies of all suggestions by the public, the minutes of the special meeting of the MAPC, and their recommendation to the City Commission are enclosed. The action by the Board of City Commissioners at today's meeting was to receive and file. There was little discussion of any specific comments suggested by the public at the meeting.

GEL:rme

Enclosure

November 4, 1971

Board of City Commissioners

Robert A. Lakin, Director of Planning *ra*

Special Meeting for Discussion of Liberalizing Zoning

As requested by the City Commission, the Metropolitan Area Planning Commission was asked to respond to the request as to what should be done to "liberalize zoning." The MAPC felt the best way to provide a response was to hold a public hearing and invite those interested to comment and make their suggestions. The enclosed letter was sent to those involved in or with zoning, including those in real estate, law, architecture, community groups and organizations (Coalition Planning, Model Cities, Environmental Task Force, Project Beauty, Home Builders, etc.). A special meeting was held by the MAPC on October 8 on this subject. Written responses were requested so the MAPC would have an opportunity to digest comments and proposals so that they might act at that meeting.

Copies of all responses and minutes of that meeting are attached. In addition, two letters received after that hearing are also attached. Although one is quite negative, little in the way of specific changes is suggested. The writer will be contacted and, hopefully, he can be made aware of many positive things happening he may not be aware of since he has not been before the MAPC.

It is nearly impossible to summarize the comments due to their diversity. A careful reading of the letters is recommended. It would seem about evenly divided among comments to "toughen up" as compared to "liberalize". However, it is fairly obvious several want shorter procedural times. This is an advantage to developers; a disadvantage to neighborhoods and others now becoming interested in zoning. Several suggest some degree of professional staff having certain powers to make changes. Others want elimination of the replatting policy. This would be fine if legislation was available to require adherence to the comprehensive plan (Re R/W's, easements and improvements at building permit time). Requests for stronger sign control, screening, staff approval, countywide zoning, CUP provisions, more districts appear to opt to stricter law.

The issue seems not to be one of stricter or more liberal zoning, but instead points to the need of shedding a 1926 ordinance and replacing it with an ordinance containing new concepts for land development. Although the MAPC was disappointed at the lack of response at the hearing, it was the sense of that group that most items will be resolved by the ZAC (Zoning Advisory Committee) with

Page 2 - Board of City Commissioners
November 4, 1971

the development of a new ordinance. Certain other items are legislative in nature and are the prerogative of the Board of City Commissioners. Based on the apparent lack of interest, the Planning Commission feels no additional effort (other than the ZAC activity) on this subject is needed at this time.

RAL:ber

Attachments

cc: MAPC Members
Ralph Wulz, City Manager

WICHITA-SEDGWICK COUNTY

DATE

October 29, 1971

METROPOLITAN AREA PLANNING DEPARTMENT

TO Robert A. Lakin, Director
FROM Jack H. Galbraith, Chief Planner
SUBJECT Liberalizing Zoning Report

At the Planning Commission noon luncheon on October 28, 1971, I raised the question as to what form or action the Commission wanted transmitted to the City Commission on their discussion of liberalizing zoning.

It was still the concensus of the Commission that the comments, both from the letters and comments made at the meeting, should be summarized and that most of the suggestions; more districts, flexible yard requirements, P.U.D.'s for small areas, were already under study and review by the Zoning Advisory Committee. They requested that those items that could be reviewed by the committee should be transmitted to the ZAC committee chairman.

The Commission felt quite strongly that the City Commission should be made aware of what they considered a "complete lack of interest" in both attendance and written response. The Commission still wants to see a summary of the comments and minutes of the meeting.

In the discussion of Dwire's letter, they were concerned by the tone of the letter. They felt you should respond and perhaps talk to Dwire, however, Rising suggested that you first find out why Pizza Hut did develop their factory in North Dakota. Blakey says they bought a factory there and that Indian labor was a consideration in that location.

JHG:ls

October 29, 1971

Mr. Harold L. Warner, President
The Wichita Association of Home Builders
730 North Main
Wichita, Kansas 67203

Dear Mr. Warner:

We received a copy of your letter to Mayor Greene on the subject of zoning. As you know, Mr. Savage responded to our inquiry on this subject. His letter, together with all others, were presented in full to the Metropolitan Area Planning Commission at the public hearing which they held on October 8, 1971. The minutes of that meeting, together with all letters, will be forwarded to the City Commission in the near future (November 9, I believe).

I assume that any additional comments would be welcomed by them at that time. We would also appreciate any specific proposals you might have. If we could review them in advance of the City Commission meeting, we would be able to better respond to them for the Commission.

Sincerely,

Robert A. Lakin
Director of Planning

RAL:JHG:ber

cc: Mayor Greene
Ralph Wulz, City Manager
Jim Savage, Executive Vice President
The Wichita Association of Home Builders
730 North Main, Wichita 67203

WICHITA-SEDGWICK COUNTY

DATE

October 6, 1971

METROPOLITAN AREA PLANNING DEPARTMENT

TO Robert A. Lakin, Director of Planning
FROM Glen E. Lytle, Special Assistant for Zoning *GEL*
SUBJECT Prototype Ordinance - Transitional Yards

In response to that portion of the letter of October 1, 1971 from Jim Savage, Executive Director of the WAHB, I have diagrammed on the attached sheet, examples of the application of the provisions of transitional yards for the B-1 district. As you will note, the worst example that I could come up with would require a 27.5% portion of the lot to be landscaped.

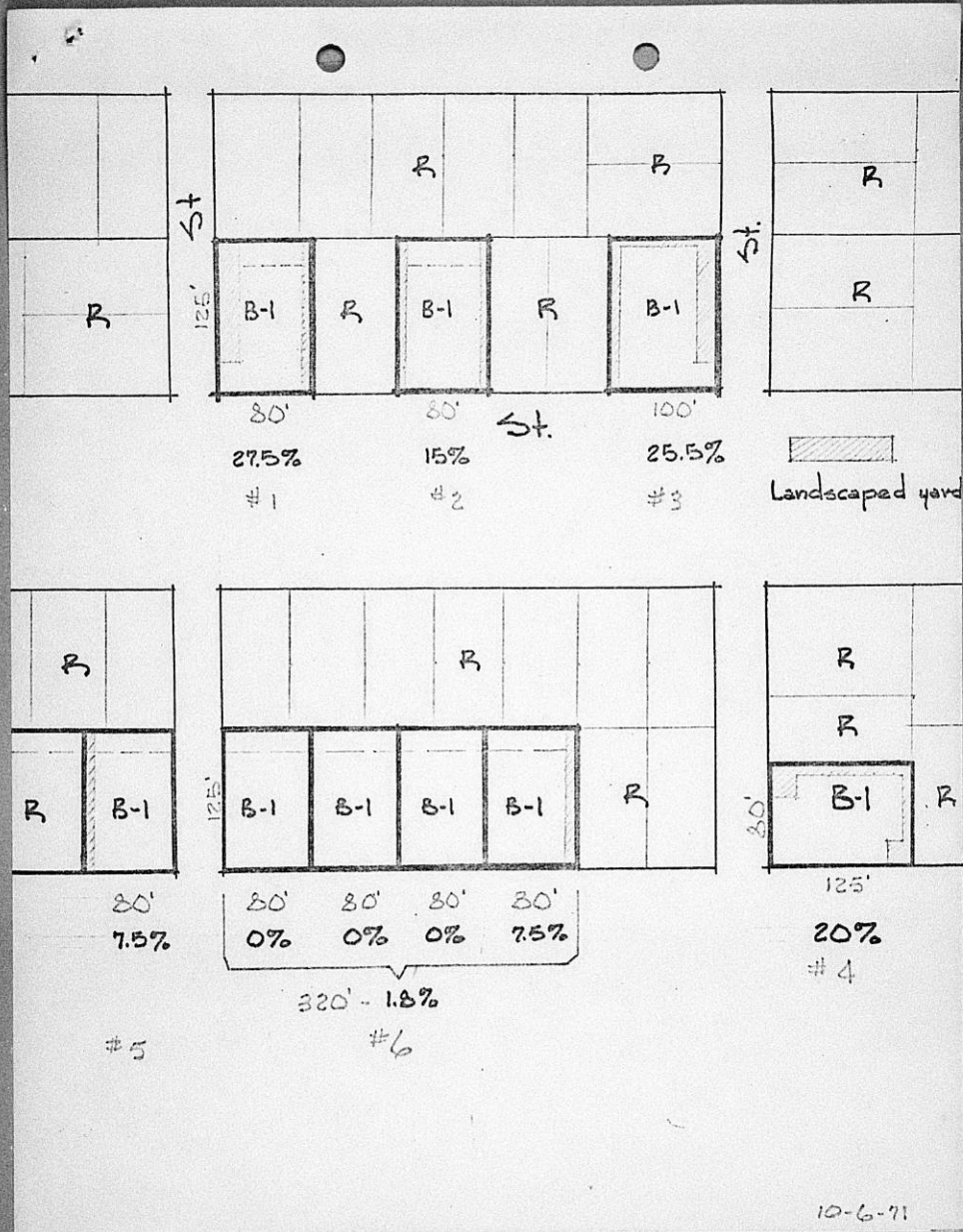
It is part of the guidelines of ZAC, however, to not recommend spot zoning of an individual lot as indicated by numbers one to four, but would establish a minimum area to be considered. This provision has not been finalized, but discussions have been along the line of 4 to 5 times the minimum zoning lot requirement or to a minimum acreage for each of the zoning districts. Following this philosophy, examples numbered 5 or 6 would be a more realistic set of examples of the requirement for transitional yards. As you will note the percentage of landscaping on these examples of minimum lot size is from 7.5% to 0%.

It is my opinion that these landscaping requirements will not create good design, nor will it assure that adjacent residential properties will be protected, it will however provide a minimal transition from a business to residential use.

The dotted line at the rear of the property would be a yard that could not be used for structures but could be used for off street parking. In most cases it would require only 10 to 12 feet more than what would normally be required by an easement or a rear yard.

GEL:rme

cc: Jack H. Galbraith, Chief Planner



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September 21, 1971

Mr. Robert Lakin
Metropolitan Area Planning Department
104 South Main Street
Wichita, Kansas 67202

Dear Bob:

Thank you for your letter dated September 17, 1971. I appreciate the opportunity, however, I do not feel that I will be able to give you my suggestions without spending a great deal of time producing something which would not be destructive while at the same time trying to be constructive.

I think the matter deserves much consideration and perhaps some re-construction of zoning ordinances and perhaps we should stay with what we now have with a more ready interpretation of the present zoning.

I will not be in Wichita on the 8th of October owing to a convention for which I have held reservations for six months or so and do not want to miss the convention.

As a matter of asuggestion I think that some thought should be given to sending someone to the various conventions including International Council of Shopping Centers, Apartment conventions.

As you know I feel it takes much too long to get zoning passed, and most generally we are much behind time with our zoning. As our expensive zoning of Westway, Eastgate with certain protective clauses included did not hold up as far as protection is concerned for the applicant and then without fanfare the people adjacent obtained their zoning without restrictions.

I therefore would say there are many inequities including the fact that the early zoned property generally bears a "ton of the special taxes" while the satellite sites across the street gets by with residential type special assessments which I consider quite unfair particularly during the time the taxes is being paid by the early zoned property.

I also feel that a discussion of this matter with an opportunity to have five or six people concerned with using zoning and meeting with five or six who administer zoning might be worthwhile particularly if it were done constructively.

Sincerely,



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Kansas Association of Realtors

National Association of Real Estate Board
International Council of Shopping Centers

Wichita Chamber of Commerce
Wichita Board of Realtors

Telephone 269-6291

Law Offices
Bogart & Hink
Vincent L. Bogart
Albert Hink

One Twenty Building
Suite 501, 120 South Market
Wichita, Kansas 67202

September 21, 1971

Mr. Robert A. Lakin
Director of Planning
City Building Annex
104 South Main Street
Wichita, Kansas 67202

Dear Bob:

This will acknowledge your letter of September 17, 1971, regarding the meeting of October 8, 1971, pertaining to planning changes.

You mentioned the two main items that I have been concerned with in zoning in your letter. I think that there should be a simplified manner for obtaining zoning, which is in accordance with prescribed policies of the Planning Commission and the City Commission. There should be no necessity for someone to hire Attorneys and set through five or six hours of meetings in order to get the zoning that should be granted initially. The expense required of the Applicant should be kept to a minimum in these cases, and I see no reason why there shouldn't be a procedure where a zoning change to be granted could be in much the same manner as a license is granted by the City Clerk in these particular instances. This would require definite standards to be promulgated by the Commission and definite policies to be adopted.

I also feel that there should be either provisions for contract zoning or else the classifications for zoning should be broadened so that one is not continually faced with objections that zoning for a small commercial shop might be used for a filling station. This would also eliminate a person stating that it would be used for a small commercial shop and then changing it to a filling station after the zoning was granted.

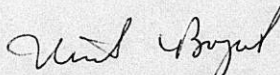


Mr. Robert A. Lakin
Director of Planning
September 21, 1971
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There are a number of other suggestions which I have made to the Legislative Committee in Topeka, which might be of some interest, but for the most part, I am sure you are familiar with my feelings as I discussed them with you prior to my presentation to the Committee.

I would be glad to be of assistance, although I am sure that you are quite familiar with my arguments in these particular areas.

Very truly yours,



VINCEN T L. BOGART
OF BOGART AND KIRK

VLB:ke



WICHITA STATE UNIVERSITY

WICHITA, KANSAS 67208
PHONE 316/685-9161

OFFICE OF
ASSISTANT TO THE PRESIDENT-BUSINESS MANAGER

September 23, 1971

Mr. Robert A. Lakin
Director of Planning
Metropolitan Area Planning Department
City Building Annex
104 South Main Street
Wichita, Kansas 67202

Dear Bob:

In response to your letter dated September 17, 1971, pertaining to the Board of City Commissioners' request that zoning be liberalized in the City, I am very hopeful that such liberalization can await the final product of the Zoning Advisory Committee's recommendations. It would appear somewhat irresponsible to make changes in the interim when they might well be made effective through a complete revamping of the zoning laws.

Sincerely yours,

Roger D. Lowe
Assistant to the President
for Finance and Business Manager

RDL:jw



LAW OFFICES OF
COOMBS AND BRICK
SUITE 725 SUTTON PLACE
WICHITA, KANSAS 67202
(316) 263-2261

EUGENE G. COOMBS
SIDNEY J. BRICK
WILLIAM D. COOMBS
JAMES M. GUY
DWIGHT D. MURPHEY
OF COUNSEL

September 27, 1971



Mr. Robert A. Lakin
Director of Planning
Metropolitan Area Planning Dept.
City Building Annex
104 South Main Street
Wichita, Kansas 67202

Dear Mr. Lakin:

This will acknowledge the receipt of your letter of September 17, 1971, requesting on behalf of the Metropolitan Area Planning Commission any specific suggestions I might have relative to liberalizing zoning in the city of Wichita in connection with the proposed new zoning ordinance.

I feel sure that the Planning Commission and your excellent staff have some very pertinent, timely and specific recommendations, and probably anything I might suggest would be duplication.

In considering the matter, my overall opinion is that the procedure for rezoning has become too expensive, burdensome, time consuming and laborious, and that steps should be taken through states authorizing legislation or changes in local regulations and policies and streamline this procedure. I believe one suggestion which has merit for doing this is granting authority to the Planning Commission or staff to grant zoning changes when changes are in accordance to adopted plans and/or policies, and there is no protest. I also doubt the advisability of having the City Commission review each case, though I realize under the present state legislation, this is necessary. I would favor streamlining the procedure, whereby the Planning Commission members would be relieved of spending the long and arduous hours considering the applications and protests for rezoning. I doubt if there is any way to avoid the necessity of the members of the Planning Commission from being required to make the difficult decisions.

I personally am very much opposed to conditional zoning as I feel that there is a great opportunity for conditional zoning concept or practice to be abused.

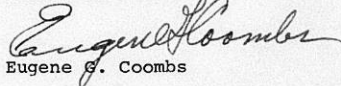
Mr. Robert A. Lakin
Page 2
September 27, 1971

Having once served on the Planning Commission and acting as chairman for a period of time, I must say that I have the greatest respect and admiration for the fine men and women who have served on this commission, and they are certainly to be admired for their unselfish desire to improve the administration and welfare of our city.

Best regards.

Very truly yours,

COOMBS AND BRICK

A handwritten signature in cursive script, appearing to read "Eugene G. Coombs".

Eugene G. Coombs

EGC:db

September 27, 1971

TO: Bob Lakin, Metropolitan Planning Commission

FROM: Waco-Finn Model Cities Council

m/s

SUBJECT: Liberlizing zoning in Wichita

In reply to your letter asking suggestions in changes in zoning laws, the Waco Finn Council took the following action:

The Metropolitan Planning Commission use the Model Cities Councils and/or PAC's in decisions of zoning, and that in the future, when area wide citizen participation is set up, this group will be utilized in decisions of zoning changes.

Waco-Finn Council request this action be included in the meeting of October 8, 1971, Metropolitan Planning Commission.

vl

cc: Stan Hendrix, Waco-Finn Council Chairman
Mary Glazier, Community Organization Specialist



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OR 683-3912
435 N. BROADWAY
SUITE 201
WICHITA, KANSAS
67202



September 30, 1971

Mr. Robert A. Lakin,
Wichita-Sedgwick County
Metropolitan Area Planning Department,
City Building Annex,
104 South Main,
Wichita, Kansas 67202.

Dear Mr. Lakin:

In answer to your letter of September 17th requesting specific suggestions on things that might be done to liberalize the zoning in our city, I would like to give you some of my opinions on the subject.

First off, many of our problems with the commercial and industrial growth of the city are not just zoning oriented but a combination of problems that come from building inspection regulations, traffic rules and regulations, subdivision and platting as well as zoning. I know it is the intent of all those individual groups and bodies to do only what they consider to be the very best for the city but sometimes they become so overzealous in their interpretation of some of the regulations that they make developing in this city more problems than it is worth.

I know I was not ask to expound upon these items but I felt that it was so important that someone take a look at the broad view, I felt compelled to put them down.

As to zoning alone, I would like to make the following suggestion. It would be helpful if the city was to designate those situations and areas upon which they would look with favor for re-zoning and development. This would give industry and people in the industry a better insight into which streets and areas to lead clients to. It should be encouraged, but not necessarily demanded, that zoning be asked for in larger parcels, specific depth factors on

Mr. Robert A. Lakin

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September 30, 1971

major arteries should go thru to the next street and the alleys in those streets vacated. If we could get away from depths of 120 to 130 feet and extend to 200 plus, we could eliminate one of the major problems of traffic congestion because traffic could then flow in and out of these properties easier. The main point, in my opinion, is that zoning should be one block deep on either side of main arteries.

While I understand the necessity, in some cases, of requiring replatting with a rezoning there are numerous times when replatting is simply unnecessary and costly and accomplishes nothing for applicant of the city. Since this is not a statutory requirement, eliminating it in most cases could save a great many people both money and time in development.


I think it would be possible to broaden the classification in the BB zoning to include certain type of service businesses. Many of the service businesses are individually owned and are quiet enterprises and can not stand the cost of establishing within a major business complex.

I wish to thank you for the opportunity of expressing myself on this subject.

Sincerely,

SANDLIAN REALTY

By


Colby B. Sandlian, C.C.I.M.

CBS:vb

Roy E. Casper, President
Morris R. Perkins, Vice Pres. Production
Jack Jones, Vice Pres. Design



Wichita Sedgwick County
Metropolitan Area Planning Commission
City Building Annex
Wichita, Kansas 67202

October 1, 1971



CALVIN • PERKINS • JONES/p.a.
ARCHITECTS
SUTTON PLACE-WICHITA, KANSAS 67202
Telephone (316) 253-2221

Att: Robert A. Lakin
Director of Planning

Re: New Zoning Ordinance

In connection with the studies being made for new zoning ordinances, I have the following suggestions:

1. That the Zoning Advisory Committee, Planning Commission, and City Commission re-examine carefully past attitudes toward arbitrary set-back regulations and height restrictions before continuing these in new ordinances.

The imperative necessity for future conservation of land and the economical servicing of land with streets and utilities make it's efficient use of paramount importance.

Traditional attitudes toward set-backs from property lines stem from an attempt to legislate "good design" and neighborhood attractiveness, based on criteria which are no longer valid.

Today's trend toward a greater variety of attractive life styles indicates that it is no longer necessary to waste land on an early 1900's idea of the ideal community.

The control of population density and degree of open space which resulted from set-back and height restrictions can be effectively maintained by control of percentage of lot coverage and floor area ratios in the various zones.

Members: American Institute of Architects

October 1, 1971

Use of percentage and ratio controls permits required open space to be planned efficiently in relation to structures instead of arbitrarily.

2. That the new ordinances provide for CUP procedures for Projects as small as one established city block (entirely surrounded by existing streets) to provide for effective private redevelopment of older areas of the City which are not subject to the extensive relocation of rights-of-way possible under Urban Renewal.
3. That when new ordinances incorporating the increased number of sub-divisions within the various zoning classifications have been adopted and a new plan prepared and approved, the planning staff be permitted to approve changes in accordance with the plan when no protest has been filed.

Thanks for the opportunity to get this Citizen's feelings on record.

Calvin, Perkins & Jones, p.a.


Roy E. Calvin, A.I.A., President

REC/sb

Project Beauty, Inc.

October 1, 1971

3

Wichita Planning Commission
Wichita, Kansas



The following is the major part of a statement I would like to make at the Planning Commission's public hearing on zoning Friday, October 8th.

Wichita needs much stronger sign controls. Wichita can be proud of the rebuilding and beautification of much of its downtown area; however many parts of Wichita are ugly and blighted, and often this ugliness is due to the overproliferation and poor placement of signs. It is not necessary or right to allow signs to visually pollute our city. In the area of signs, we urge the planning commission to adopt much stricter zoning regulations. Specifically we suggest more stringent regulation on size, number, and setbacks; and elimination of projecting signs, animated or flashing signs, billboards or outdoor general advertising signs within the city.

A Non-Profit Organization to encourage the Beauty of Wichita

SOUTHWEST NATIONAL BANK
BOX 1401
WICHITA, KANSAS 67201

Project Beauty, Inc.

We recognize that non-conforming signs would have to be given a reasonable and value-based period of time for their removal. Project Beauty, Inc. supports a strong sign code and urges that necessary signs be well planned and thoughtfully executed so as to be an attractive and functional part of our city.

Mr. T. J. Guinan
Chairman,
Committee for Better Signs
Project Beauty, Inc.

A Non-Profit Organization to encourage the Beauty of Wichita

SOUTHWEST NATIONAL BANK
BOX 1401
WICHITA, KANSAS 67201



THE WICHITA ASSOCIATION OF HOME BUILDERS

730 North Main

Wichita, Kansas 67203

(316) 265-4226

October 1, 1971

Robert A. Lakin
Director of Planning
City Building Annex
104 South Main
Wichita, Kansas 67202



Dear Bob:

We have had many builders respond to your letter dated September 17, 1971, pertaining to recommendations which might liberalize zoning in the City of Wichita.

All responses indicated a strong opinion to stay away, as much as possible, from state legislation. And in all probability, I am sure, you will receive the same indication on suggestion number one the same as from our group.

Picking up suggestion number three next, we feel that when a change in zoning is requested, the Planning Commission and City Commission give considerable more consideration to the past history of the area as well as its future use.

Recently the Commission refused to zone several lots in one addition of the city from single family to duplex. This area had been sold twice at a tax sale and certainly the duplex development would have put them back on the tax rolls and helped the area in general. The area, for all practical purposes, has been dormant since it was platted in 1954. A study of the history as well as the future possibilities certainly should merit much more in-depth consideration than we possibly have been devoting.

Now for question number three relating to changes in local regulations. Although, Bob, there are some good aspects in our new prototype zoning, there are certain areas that do cause great concern.



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October 1, 1971
Robert A. Lakin

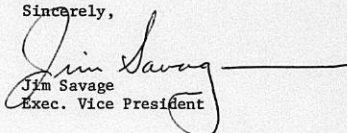
Citing our last meeting on Tuesday evening, September 21, Glen Lytle diagrammed the screening requirements for commercial lots on the blackboard so that all present could have a thorough understanding of exactly what was being proposed. Although the screening areas have some merit, and it's doubtful that all of the landscaping will be maintained as we would like to think, on a minimum-size lot of 10,000 feet, his requirements would place the developer contributing approximately 45% of the lot to landscaping. This is far too great a contribution for the area and I think that perhaps our present zoning requirements, of which there are no screening requirements, might be more agreeable in the future than unkept landscaping.

Architecture today could be far more enhancing than an unmowed lawn or shrubbery filled with bagworms turning brown in the middle of the summer.

Although we need local regulation, we should be very critical of ourselves in the process so as not to create untenable situations in isolated areas or in a city at large in the process. The last thing we want is to be over-regulated.

Thanks, Bob, for giving us an opportunity to express ourselves.

Sincerely,


Jim Savage
Exec. Vice President

JS/bb
cc-WAAB Officers, Past
Presidents, Market Analysis-
Taxation & Legislative Committee

HIGGINS & BRIMER
ATTORNEYS AT LAW
SUITE 313 - FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202

WILLIAM P. HIGGINS
JOHN W. BRIMER

263-6148
AREA CODE 316

4 October 1971

Metropolitan Area Planning Department
City Building Annex - 104 S. Main
Wichita, Kansas 67202

Attention: Robert A. Lakin
Director of Planning

Re: Request for Suggestions as to
Liberalizing Zoning in Wichita

Gentlemen and Madam:

In response to the request contained in your letter of September 17, 1971, it is impossible for me to give a vote analysis of existing ordinances, whether state or municipal, in sufficient detail to cover all of the ramifications envisioned by a new set of zoning ordinances as it would affect the property located in the City of Wichita, Sedgwick County, Kansas.

The most that I might accomplish by an opportunity to address myself to the zoning practice presently carried on before the Planning Commission would be to point out some of the existing inequities which have developed by our continued misuse and abuse of the term "policy." I am a firm believer in policy and the order which a specific set policy can establish but feel that the manner in which policy is bandied around in zoning matters is a total misuse of the word.

I would favor some statement of zoning policy which would give an applicant an opportunity to save the expense of hiring an attorney for lengthy proceedings in areas where there is no contest as to the zoning. That policy should include not only designation of favorable areas for specific zoning application and uses, but also provision for the attendant practice of requests for easements and dedications.



MAPD
4 October 1971
Page 2

These latter policies which are attendant to zoning only by reason of the necessity of required replatting should also have built-in exceptions so that applicants will not be required to make ridiculous and oppressive dedications of property for uses that of necessity will not be necessary for a period of up to ten years.

There should be no designation of a policy that is not in writing. An example of such a policy is 20 foot building set back for "BB" zoning and 35 foot building set back for "LC". This referred to policy is an unwritten policy and if such a policy is to be enforced it should be written and the exceptions thereto outlined. The outlining of exceptions to these policies is not difficult for the most part and should be attempted.

The constant requirement and additional expense entailed where zoning is made subject to replatting is a drain on the funds and resources of applicants. Provision should be made for using deeds and covenants to handle dedications and set-back lines where possible to eliminate the necessity and expense of replatting. Of course, this cannot be done in all cases but there are the greater percentage of cases before this Commission where platting is required, that a simple deed or covenant could handle the city requirements. This would eliminate the enormous time and expense involved not only for the applicant, but the enormous case loan before this Commission and subsequently the City Commission.

The policy regarding hearings before the City Commission should be definitely changed. At the present time it requires an attorney for the applicant to plead an unfair hearing before the Planning Commission before he can orally present his case to the final determiner of the facts, the governing body of the City of Wichita.

There is no way that an applicant receives due process where the Planning Department is given the right to orally present and the applicant is not allowed to orally rebut unless he alleges unfair treatment before the Planning Commission. It is obvious that the right to appear and orally present information is far more effective, especially when the application is opposed by the Planning Department who is allowed an oral presentation.

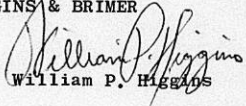
MAPD
4 October 1971
Page 3

I would agree that there is no necessity for a hearing where the Planning Department and Planning Commission are in favor of the application but I do definitely believe that when the application is opposed by the Planning Department or the Planning Commission, there should be no denial of the right of oral presentation by the applicant.

Thank you for the opportunity to express these few observations and I will do everything possible to be present at the meeting on October 8th to further elaborate on my comments.

Yours truly,

HIGGINS & BRIMER

By: 
William P. Higgins

WPH/cp

WICHITA - SEDGWICK COUNTY



DEPARTMENT OF COMMUNITY HEALTH
1900 E. 9TH ST. - WICHITA, KAN. 67214

October 5, 1971

Robert A. Lakin
Director of Planning
Metropolitan Area Planning Department
City Building Annex
104 South Main
Wichita, Kansas 67202

The Land-Use Subcommittee of the Environmental Resources Task Force met on October 4, 1971, and considered the request of the Board of City Commissioners on recommendations which might liberalize zoning in the City. As chairman of the subcommittee, I have been requested to appear at the public meeting at 3:00 p.m. October 8, 1971, and present the following suggestions that the Land-Use Subcommittee feels should be supported:

1. Encourage the continued effort of the Zoning Advisory Committee in carrying out the review process for a new zoning text, i.e., zoning ordinance, with an early date for implementation.
2. Early implementation of county-wide zoning.
3. Early implementation of a county-wide building code and permit system.
4. Implement a unit plan system involving smaller tracts which will provide more flexibility with more specific districts.
5. Pursue changes in the State law which will enable the application of zoning review by professionals, i.e., professional planning staff making decisions within an approved plan and policy agreement, with appropriate elimination of Commission review so as to reduce time scheduling.



WICHITA—SEDGWICK COUNTY

Robert A. Lakin
October 5, 1971
Page 2

The Land-Use Subcommittee appreciates the opportunity of being requested to consider these matters and respectfully offers this contribution.

Suzain Winters
Dwain Winters, Chairman
Land-Use Subcommittee

DW/jk

cc: Joan Kamas
Bob Schaefer
Frank Hafer
Dwight Thompson
Charles McAfee
James F. Aiken, Jr.
Don Cross

Six
October
1971

606

Mr. Robert A. Lakin
Director of Planning
Wichita-Sedgwick County
Metropolitan Area Planning Department
City Building Annex
104 South Main Street
Wichita, Kansas 67202

Dear Bob:

Your recent letter requesting a response on liberalized zoning for the City is certainly of interest, but awesome in complexity. I have brief knowledge of the current study of the Zoning Advisory Committee and realize they have been researching the matter in depth for some time. It is difficult for me, with less background information, to respond with comprehensive understanding of all sides. I do have a few random thoughts, however.

1. Broader zoning categories - I favor a broader breakdown of zoning categories. I believe this would provide additional assurance to an Owner that adjacent development would be harmonious in use to his development.
2. County Zoning - I favor the long range goal of County Zoning, building code adoption, and a land use plan.
3. Community Unit Plan - I favor zoning that would encourage greater freedom of ingenuity in planning of larger parcels of ground -- freedom that would include a relaxing of set-back requirements, a statement of density variables and thus an encouragement for community use open spaces.

- continued -



6 October 1971
Mr. Robert A. Laki
Page 2

4. Professional Staff - I support the concept of more of the planning and zoning decisions to remain with the planning staff. The staff, professionally trained, and more acutely attuned to the many details of a particular problem, can respond professionally without personality conflict. Planning Commissioner and City Commissioners time and conflict of interest should be reduced. The City Commission position would then become more of an "appeals" position rather than a final "approval" position and/or disapproval of a planning commission decision.
5. Quality of Development - This I know cannot be regulated by zoning. Hopefully, however, your encouragement of better site planning and site development could be given to an Owner or developer, thus slowing the proliferation of piece meal, ticky-tacky development currently dominant in the Wichita suburb areas. Soon the increased economic value of larger scale, contiguous developments will become more aware to our realtors and developers, thus improving the commercial and neighborhood scene.

These represent a few random thoughts that come to mind. I appreciate the invitation to convey them to you.

Sincerely,

Schaefer, Schirmer and Eflin, AIA



Robert J. Schaefer, AIA

dt

Malone, Dwire and Fraser
Attorneys at Law

308 WEST CENTRAL
WICHITA, KANSAS 67202

E. L. (PAT) MALONE
EDGAR WM. DWIRE
G. KNUTE FRASER

(316) 265-4248

October 19, 1971

Mr. Robert A. Lakin
Director of Planning
City Building Annex
104 S. Main
Wichita, Kansas 67202



Re: Liberalization of City Zoning

Dear Mr. Lakin:

While I was not a recipient of your letter dated September 17, 1971, I have obtained a copy of the same.

First let me say that I have never presented anything to your department to my recollection. Comments by qualified appraisers and business men, with whom I have had the opportunity to conduct business over the past years prompts this letter.

I just want to take this opportunity to express your organization's general reputation in the community and hope that you, by the acts that you indicate in your letter, can rectify that situation to some extent.

Recently in discussing real estate and building opportunities in the City of Wichita an appraiser, who was qualified and a member of the American Institute of Real Estate Appraisers, advised that Wichita or Sedgwick County area would not be a location that would give cooperation from the planning or zoning department. The general experience across the State of Kansas is the City of Wichita has a bureaucracy contained within our city administration that cannot exercise judgment in recommending modifications or waivers when strict compliance is not necessary or impractical. It was specifically pointed out that areas such as Kansas City, Kansas, Topeka

Mr. Robert A. Lakin
Page 2
October 19, 1971

and Hutchinson had a different attitude of wanting to work and cooperate with an incoming or expansion of business, while your organization expresses an almost negative attitude.

The dedications required for possible future development, consisting of a taking of property without compensation, have been beyond reason. When a commercial site is in the process of being developed the City is demanding land for possible development and limiting the area that the business can build on, although the business had to pay top price and taxes on the land.

What program do you have to benefit your small local industries? Is there any program that would benefit industry and cause them to want to build their expansion in the City of Wichita? Why did Pizza Hut build its factory in North Dakota? Why in areas that are over fifty years old and deteriorating rapidly do we deny light commercial zoning? In ten years urban renewal will have to do the job at the taxpayers' expense.

We have spent a lot on public relations and talking about getting new industries into the City of Wichita. It is the actual attitude of some of our bureaucracy in our City administration that many businesses have recognized as being the real problem. The heads of government expound beautifully but the body does not follow through.

Last, but not least, is one general reference to your letter of September 17, 1971, that I heard it sounded like they were going to do something; however, they were putting the foxes in charge of the chicken house to increase egg production.

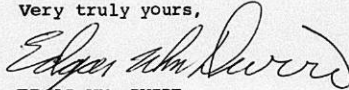
It is my understanding that Tulsa, Oklahoma, and Houston, Texas, two cities that are expanding and growing in these times of depressions, do not even have such an organization as you maintain.

I am concerned. I own a considerable amount of property in Wichita. It is not your current rules and regulations that concerns me. It is the attitude, willingness and desire of the City administrative offices to work with

Mr. Robert A. Lakin
Page 3
October 19, 1971

people interested in the further development of our city on a private commercial basis that concerns me. The administration planned a beautiful city. They have obtained a lot of government money. Our taxes are at a very high rate. I would suggest that we now get down to the business of working with what we have to improve our position. I am not forecasting defeat, but it would be my humble opinion that you are not going to make much progress with your current plan of operation.

Very truly yours,



EDGAR WM. DWIRE

EWD/aw

cc: Jack H. Greene, Mayor

Glenn J. Shanahan, President of City Commissioners

Garry L. Porter, City Commissioner

James M. Donnell, City Commissioner

John S. Stevens, City Commissioner



THE WICHITA ASSOCIATION OF HOME BUILDERS

730 North Main

Wichita, Kansas 67203

(316) 265-4226

October 21, 1971

Mayor Jack H. Greene
City Building
Wichita, Kansas 67202

Dear Mayor Greene:

The members of our Association compliment the City Commission's awareness and proper interest in the zoning problems for Wichita. We have followed closely the actions you have taken in requesting the planning director to make recommendations for liberalizing Wichita's zoning regulations.

We, therefore, request that the Commission authorize a public hearing for the purpose of exploring the possibilities of liberalizing zoning in Wichita.

We are very sincere and keenly interested in our city's future growth, too, and feel that only through a thorough analysis of this problem can we resolve it properly. In our opinion a public hearing will certainly lend insight into this complex and important factor of Wichita's future.

Please advise us of the established date and time.

Sincerely,

Harold L. Warner
President

HLW:jr

cc: Garry L. Porter, Commissioner
Glenn J. Shanahan, Commissioner
James M. Donnell, Commissioner
John S. Stevens, Commissioner
Robert A. Lakin, Director of Planning ✓



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SUMMARY OF COMMENTS FOR LIBERALIZING OF ZONING

	Shorter Procedure	Professional Staff Approval	Additional Districts	Eliminate Replatting	CUP for Residential on Smaller Tracts	Other
Lambertz	X					Change special assessment dependence on zoning; stay with existing and interpret.
Bogart	X		(or contract zoning)			
Lowe (ZAC)						Defer action for ZAC report.
Coombs	X	X				Opposed to conditional zoning.
Waco Finn Council						Use Councils in zoning decisions.
Sandlian		X		X		Designate areas Plng. Comm. would look with favor on zone cases; additional depths; broaden "BB".
Calvin					X	Use new control techniques in lieu of bulk controls.
Project Beauty						Strong sign control.
Home Builders						Redo screening requirements in new ordinance; rely on history of area.
Higgins				X		Set policies in writing; change hearing policy before BCC.
Environmental Resources Task Force		X	X		X	

October 4, 1971

Wichita-Sedgwick County Metropolitan Area
Planning Commission

Robert A. Lakin, Director of Planning

Zoning Policy

Attached are copies of communications we have received concerning the special meeting for discussion on liberalizing of the zoning ordinance.

We sent a letter to all groups active in this area plus engineers, attorneys and architects that we know are active in the area of zoning. We may still receive some additional comments.

Jack and I will be prepared to discuss these specific recommendations made to you at the meeting Friday. Please remember the meeting is at 3:00 p.m., on October 8, 1971, in the Planning Commission Room.

RAL:ls
Attachments

WICHITA-SEDGWICK COUNTY

DATE

October 4, 1971

METROPOLITAN AREA PLANNING DEPARTMENT

TO Files *Handwritten initials*
FROM John D. Gist, Principal Planner
SUBJECT MAPC special meeting re discussion on liberalizing
of zoning ordinance

I received a phone call this morning from George Campbell, Campbell and Castle Engineers, regarding the notice he had received from our office concerning the above referenced special meeting of MAPC. George said the only comment he would like to make was to reiterate a concern previously expressed by a group of local engineers called Professional Engineers in Private Practice (PEPP), and the Wichita Professional Engineering Society (WPES), at the time of our 1969-1970 annual review of the MAPC Subdivision Regulations. That concern being that the MAPC and governing bodies should not require replatting of lands associated with zone changes.

The staff's position at that time was that until adequate building setbacks were amended into the zoning ordinance, and until an access control policy is adopted, that replatting is necessary in many instances. I trust that this position has not changed, and hopefully some of these concerns can be eliminated by the adoption of a new zoning ordinance.

JDG:rme

cc: Robert A. Lakin, Director of Planning
Jack H. Galbraith, Chief Planner
Glen E. Lytle, Special Assistant for Zoning

September 22, 1971

Mrs. John Barrier, Chairman
Subcommittee on Zoning
216 North Pershing
Wichita, Kansas 67208

Dear Mrs. Barrier:

We have received the following letter from Bob Lakin relative to their interest in receiving information on "Liberalizing Zoning in the City". Although it would seem impractical to feel that your group could respond by October 1, and to have a recommendation approved by the Coalition Planning Board, I do hope that your committee might make this issue a part of their concern during your present activities.

Sincerely,

C. Bickley Foster
Program Coordinator

CBF:bp

cc: Robert Lakin



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*-Census years. . . others are Chamber of Commerce estimates B-Billions M-Millions S- Sedgwick and Butler Counties (SMA) since 1960

YEAR	POPULATION IN SEDGWICK COUNTY	TELEPHONES IN SERVICE	ELECTRIC METERS IN SERVICE	GAS METERS IN SERVICE	WATER METERS IN SERVICE	STUDENTS 1ST THRU 12TH GRADE	MONTHLY AVERAGE EMPLOYED PEOPLE IN SEDGWICK COUNTY	POSTAL RECEIPTS	BANK DEPOSITS	BANK RESOURCES	BANK CLEARINGS	BANK DEBITS	FISCAL YEAR	CALENDAR YEAR	YEAR
1938	131,745							1,115,749.							1938
1939	138,187							1,108,861.							1939
1940*	136,526	39,828	36,715	29,364	26,390	23,443	52,091	1,140,836.		\$ 76-M	\$ 160-M	\$ 559-M	\$ 38,711,706.	47,428,259.	1940
1941	142,861	44,145	41,089	31,962	28,508	24,434		1,263,834.		104	210	822	55,049,704.	64,284,530.	1941
1942	164,994	50,547	41,698	35,709	30,688	26,033		1,423,716.		163	258	1,213-B	70,288,520.	74,016,534.	1942
1943	218,619	53,136	42,874	37,444	31,836	28,682	89,720	1,612,017.		221	318	1,873	81,603,209.	90,344,279.	1943
1944	226,724	53,251	43,708	38,284	32,436	27,532		1,879,531.		247	394	2,342	96,172,578.	102,162,086.	1944
1945	203,398	52,855	43,836	38,703	32,775	24,724	61,140	1,891,002.		266	389	2,365	107,078,878.	110,553,467.	1945
1946	191,612	57,592	45,480	40,063	33,769	24,441		1,819,497.		229	453	1,977	121,700,968.	138,680,707.	1946
1947	203,146	64,285	47,586	42,250	35,705	24,514	60,870	1,925,779.		235	557	2,351	150,700,044.	164,214,689.	1947
1948	214,469	72,361	50,444	44,936	37,982	25,527		2,193,594.		242	668	2,667	173,617,395.	191,764,584.	1948
1949	230,929	75,480	54,463	49,153	41,131	27,640		2,472,714.		247	593	2,567	191,417,453.	179,695,787.	1949
1950*	222,290	82,840	59,994	54,864	45,028	29,409	80,750	2,622,073.		272	715	2,887	182,130,263.	206,566,538.	1950
1951	256,860	92,027	65,783	61,121	48,192	32,697	102,850	2,914,680.		329	884	3,613	256,540,042.	324,943,049.	1951
1952	272,864	99,710	72,734	68,098	51,610	36,332	116,650	3,329,287.		318	1,035-B	4,293	344,411,442.	359,123,336.	1952
1953	260,150	107,934	76,915	72,541	52,122	38,932	117,700	3,650,925.		345	1,114	4,109	399,504,716.	368,092,460.	1953
1954	280,199	114,582	83,433	77,350	58,325	43,194	119,150	3,953,721.		383	1,197	4,399	368,901,109.	388,169,089.	1954
1955	297,388	123,617	91,555	81,477	61,687	48,476	120,900	4,116,934.		370	1,354	4,777	413,254,230.	420,872,402.	1955
1956	306,339	134,299	96,515	86,049	63,684	53,083	124,350	4,268,088.		383	1,427	4,705	413,747,551.	418,872,404.	1956
1957	312,131	143,030	100,394	88,848	67,157	55,960	133,650	4,556,585.		385	1,490	5,196	422,533,439.	426,767,838.	1957
1958	325,961	149,955	101,769	90,351	67,801	57,769	125,700	5,046,548.	\$365-M	401	1,663	5,426	401,650,235.	431,271,481.	1958
1959	321,503	157,267	102,750	91,290	68,796	58,817	124,100	5,577,107.		362	397	5,553	436,802,030.	451,974,671.	1959
1960*	343,231	158,420	102,046	90,941	69,264	59,728	119,100	5,756,378.		370	408	5,301	437,536,540.	417,742,736.	1960
1961	324,020	160,074	109,669	92,749	69,824	61,619	117,500	5,843,291.		382	460	5,378	420,435,947.	435,122,378.	1961
1962	323,574	163,334	110,892	92,652	72,115	63,219	119,100	5,957,609.		416	484	5,814	449,671,531.	451,825,143.	1962
1963	322,113	163,446	109,830	92,441	74,062	70,774	117,350	6,977,587.		441	489	5,821	458,693,373.	485,588,350.	1963
1964	338,617	170,847	113,451	94,778	76,405	74,774	119,500	7,257,620.		486	539	6,130	507,362,514.	528,182,210.	1964
1965	346,400	176,208	113,797	95,369	76,890	76,937	121,600	7,704,249.		510	569	6,834	526,830,376.	565,943,009.	1965
1966	349,000	186,710	116,504	95,388	78,563	83,222	133,850	8,180,185.		561	630	7,535	584,520,318.	606,497,140.	1966
1967	349,000	201,713	118,413	98,242	79,592	93,703	149,950	8,468,932.		634	693	7,767	616,688,835.	629,051,890.	1967
1968	352,603	211,537	119,826	99,142	80,501	90,292	148,150	8,818,560.		674	749	8,724	652,013,502.	674,382,833.	1968
1969	354,223	221,699	121,449	99,353	81,271	92,159	165,150	9,353,702.		678	789	9,603	688,929,046.	702,691,497.	1969
1970*	389,352	225,849	121,110	97,042	81,136	89,462	153,850	9,584,911	709	772	3,128	10,118	724,775,529.	753,951,287.	1970
													819,298,658.		1971

• SEDGWICK COUNTY SALES TAX PAID
• PROJECTED TO SALES ---
• 2% Tax Rate to 6/30/58
• 2 1/2% Rate to 5/1/65
• 3% Tax Rate thereafter

September 20, 1971

Ralph Wulz, City Manager

Jack H. Galbraith, Chief Planner

Meeting to Consider Liberalization
of City Zoning Ordinance

Attached is a copy of the notice which has been mailed to interested organizations and individuals inviting them to submit their comments and recommendations which might liberalize zoning in the City. We have scheduled a meeting in the Planning commission Room on October 8, 1971, at 3:00 p.m.

Attached are extra copies of the notice should you desire to distribute them to the Board of City Commissioners.

JHG:ber

Attachment

September 17, 1971

Wichita-Sedgwick County Metropolitan
Area Planning Commission

Jack H. Galbraith, Chief Planner

Planning Commission special
meeting to consider liberalizing
zoning in the City

As we discussed this week, attached is the notice being sent out to interested individuals and organizations advising them of a special meeting being held in the Planning Commission meeting room on October 8, 1971, at 3:00 p.m. to discuss their concerns and recommendations which might liberalize zoning in the City.

Please place this date and time on your calendar.

JHG:ber

Attachment

WICHITA—SEDGWICK COUNTY



METROPOLITAN AREA PLANNING
DEPARTMENT

AMHERST 2-0611 — AREA CODE 316
CITY BUILDING ANNEX
104 S. MAIN ST.
WICHITA, KANSAS 67202

September 17, 1971

The Board of City Commissioners has requested that the Metropolitan Area Planning Commission provide them with recommendations which might liberalize zoning in the City. The Planning Commission has a citizen group called the Zoning Advisory Committee that is working on a new zoning ordinance which we hope will answer many of the inequities caused by the existing out-of-date zoning ordinance. You or your professional association may now be involved in this most important work.

The Metropolitan Area Planning Commission, in order that they may respond to the City Commission, would like to hear any specific suggestions you have as to the City Commission request. My initial thoughts, though you need not be limited to them, would be for suggestions as to changes in:

- 1) State authorizing legislation;
- 2) Changes in local regulations; or
- 3) Changes in local policy.

Examples of this might be State authorization for conditional zoning, authority for the Planning Commission or staff to grant zoning changes when in accordance to adopted plans and/or policies and where there is no protest, etc.

So that the Planning Commission may have an opportunity to digest your suggestions, we would ask that they be submitted in writing by October 1, 1971. The Planning Commission would then hold a public meeting for you to formally present these suggestions and to discuss them with the Commission. Such a meeting has been scheduled for Friday, at 3:00 p.m. on October 8, 1971, in the Planning Commission meeting room, 401 City Building Annex, 104 South Main.

If you have any suggestions, please call me or one of our staff - Jack Gabraith, John Gist and Glen Lytle.

Sincerely,

Robert A. Lakin
Director of Planning

RAL:ber

August 20, 1971

Wichita-Sedgwick County Metropolitan
Area Planning Commission
Robert A. Lakin, Director of Planning

Agenda Item Order

The bylaws (see page 11 thereof) require "planning" topics, etc. to be placed on your agenda before subdivision and zoning. I would suggest that planning items be placed after zoning so that we don't have to hold people so late.

If you think this is worth discussion, I'll prepare bylaw amendment for your next meeting.

RAL:ber

Attachment

Section 9. Order of Business. In all meetings, the order of business shall be:

1. Call to order by the Chairman.
2. Invocation.
3. Approval of minutes of previous meeting.
4. General planning topics, i.e., studies, plan elements.
5. Recommendations of the Subdivision Committee.
6. Public hearings on zoning.
7. Adjournment.

All deferred items in categories 5 and 6 shall take precedence over new items in those same categories.

Section 10. Recording of Minutes. The Planning Commission shall cause the Secretary to keep and maintain complete records of all matters coming before the Commission. The Secretary shall also prepare and maintain permanent minutes to be kept in a binder available for public view and use. Permanent copies of minutes shall not be removed from the Office of the Secretary of the Planning Commission except by order of the courts. Copies of the minutes of the Commission shall be furnished to all persons or bodies making request for same to the Secretary. The Secretary may make such charges as are necessary to recover the cost of making such copies.

August 19, 1971

Wichita-Sedgwick County Metropolitan
Area Planning Commission
Robert A. Lakin, Director of Planning

Legislation - 1972

The City Attorney by memorandum dated August 9, 1971, has requested that all departments have requests for legislation into his office by September 1. He will then, together with City Commissioners and Department Heads, meet with the local legislative delegation at Cowtown for an informal get together session. Although September 1 is the time he has asked for this information, I would imagine that only the more important pieces of legislation will be discussed if at all at the informal session. Will you please be prepared to advise me Thursday at lunch of any specific types of legislation you would like looked into for the 1972 session.

Current policy of the City is that all departments shall seek their legislation through the City Attorney's office so that the City may develop a unified legislative program. Individual departments, commissions, etc. are not expected to separately obtain legislation without the prior approval of the City Commission. I will be prepared to discuss this with you at your informal session Thursday.

RAL:ber

August 19, 1971

Wichita-Sedgwick County Metropolitan
Area Planning Commission

Robert A. Lakin, Director of Planning

Restrictive Covenants

Attached is a memorandum from the City Manager requesting a joint meeting between the City Commission and the Planning Commission to discuss the use of restrictive covenants in connection with zone cases. Also attached is page 13492 of the City Commission minutes in which this particular item came up.

I am currently developing the background material as to how the use of restrictive covenants came into being here in Wichita as related to zone cases. I am also requesting the Legal Department to provide us a legal opinion as to the legality of such covenants as a condition of granting zoning approval. We will furnish you additional information as soon as it becomes available.

RAL:ber

cc: Ralph Wulz, City Manager
John Dekker, Director of Law
H. R. Kuhn, Assistant City Attorney

Zoning Policy Review Asked By Stevens

The City Commission decided informally this morning to review its zoning policy under which applicants for a zoning change sometimes agree to restrict the use of their property.

Commissioner John Stevens questioned the constitutionality of such restrictive covenants during discussion at today's meeting of a platting case on the south side of Kellogg between Dellrose and Pershing.

Light commercial zoning was granted last year subject to replatting of the property owned by A. J. King.

AT THAT TIME, residents in the area objected to a possible drive-in restaurant there. So before light commercial zoning was granted, King offered a restrictive covenant guaranteeing the property would not be used for a food or beverage business.

Neighbors still argued today the restrictive covenant was not restrictive enough.

Stevens said requiring such a covenant before granting zoning amounts to "performance zoning," which is not allowed by law.

CITY ATTY. John Dekker said he also objects to restrictive covenants. But Dekker said they have been allowed on the basis that they are so-called "voluntary agreements." Dekker said zoning applicants technically are not required to offer the covenants as a condition of zoning.

Commissioner Garry Porter said, however, the agreements — in effect — are not voluntary. Referring to today's case, Porter said: "In a way, that (the covenant) was part of the bargain (for zoning)."

Stevens asked city administrators to schedule a meeting on the subject within 30 days. The commission approved platting on the case under discussion to include the restrictive covenant as offered by the applicant.

THE CITY OF WICHITA
OFFICE OF CITY MANAGER

DATE August 10, 1971

TO Robert A. Lakin, Director of Planning

FROM Ralph Wulz, City Manager

SUBJECT Restrictive Covenants

At the City Commission meeting of August 10, 1971, the City Commission indicated a desire to discuss with the MAPC the use of restrictive covenants in connection with zoning cases. Please place this item in your file for inclusion on the agenda for discussion at the next joint meeting--hopefully, within the next 60 days or so.


Ralph Wulz
City Manager

RW:rs

See p 13492 of BCC minutes



August 19, 1971

H. R. Kuhn, Assistant City Attorney

Robert A. Lakin, Director of Planning

Zoning - Restrictive Covenants

As I discussed with you yesterday on the telephone, the City Commission has requested a work session with the Metropolitan Area Planning Commission concerning the use of restrictive covenants in association with zoning cases. The question of the legality of this practice has been raised several times in the last few years and to my knowledge there has been no definitive answer provided the Commissions.

As you are aware, the applicant often "voluntarily" offers to file restrictive covenants on his land restricting the use to a greater degree than would be normally permitted in the zoning district for which he has made a request. Often times these covenants also include items which are to be performed by the applicant, such as screening, lighting, architectural control, etc. However, this performance part is much less prevalent than the restrictive part of the covenants. There are instances when the Planning Commission asks the applicant if he would "voluntarily" provide such covenants. Also, cases have arisen where the City Commission has made such a request. In fact, this is where the practice began when the City Commission some years ago asked for covenants on a case concerning the Osteopathic Hospital and with a case involving apartment zoning at English and Rutan.

Gene Pirtle wrote an opinion in 1961 concerning the Osteopathic Addition restrictive covenants. I read this opinion over and although it provides a very good background as to the legalities on both sides of the question, I do not see that a firm conclusion is drawn from the material.

I have not followed the law on restrictive covenants too closely over the last few years and I am sure that there are many new rulings in the court on this subject. I am not even sure what Kansas has done. I have quickly reviewed the material in Rathkopf and believe that there seems to be recommendation by Rathkopf in the supplements that the use of restrictive covenants in association with zone cases is acceptable except where the zoning was probably improper in its own right. I am not sure I understand the nuances of that logic.

Some of the particular points in which I would be interested in providing the Commission a definitive answer would be:

1. Is the practice of requesting and/or accepting restrictive covenants in association with granting of a change of zone proper under Kansas law when:
 - a. The City is made a party to such covenants, and
 - b. Where no mention of the City is made and when no request by the City or one of its agencies is of record in connection with the covenants.
2. If legal, what type of conditions may be imposed in the covenants? (Such as setbacks, use restrictions, affirmative acts, such as screening, lighting, landscaping plans, site arrangement, etc.?) If the City is made a party to such covenants, who can enforce the covenants and under what circumstances? Would the City Commission have to initiate the action or may an administrative officer, City Manager, Superintendent of Central Inspection, Director of Planning or others, through the City Attorney, attempt to enforce the covenants?
3. If the City is made a party to the restrictive covenants, what action is required to amend or release the City's interest in such covenants? Can the City agree to amend such covenants once they are filed without the consent and concurrence of the other parties who have been made a party to the covenants, such as the owners in the 200-foot notification radius?
4. If a construction permit or zoning permit is issued by the Office of Central Inspection and by such action the restrictive covenants to which the City may be a party are violated, is either the restrictive covenant voided or is the issuance of the permit improper and voided?
5. If covenants are not legal in the fashion described above, can we use covenants to bind future owners of land to an agreed-upon site plan or Community Unit Plan?

Jack and I will be available to discuss this with you at your convenience. It might be helpful, too, to discuss this matter with Pirtle as he was rather deeply involved with it several years ago.

RAL:ber

Attachments - Rathkopf, Volume 3
Opinion - Pirtle

cc: John Dekker, Director of Law
Ralph Wulz, City Manager

August 19, 1971

Wichita-Sedgwick County Metropolitan
Area Planning Commission

Robert A. Lakin, Director of Planning

Zoning Policies

At the meeting of August 17, 1971, the City Commission in receiving my report on Houston land use controls, made a motion to receive and file. Commissioner Stevens amended the motion and it passed as amended to request that the Planning Commission submit recommendations to the City Commission for the "liberalizing" of zoning policy. I stated my views to the Commission that I felt in general terms the City of Wichita zoning policies are very liberal. I believe this can be best shown by (1) percentage of cases applied for which are approved, and (2) the amount of land zoned overall or in any given quadrant for any given range of uses, such as industrial, commercial, apartments, etc. compared to the amount of land actually being used for those purposes.

There are many minor inequities that exist in the zoning ordinance which have long been recognized and which are being resolved by the Zoning Advisory Committee at this time. Also, several of the inequities in terms of mapping that will also be corrected at this same time.

There are, perhaps, some changes which could be made administratively if State law was changed whereby certain facets of zoning and zoning changes, when done in accordance with a comprehensive plan, could be handled administratively by Staff, or could be granted by zoning hearing officers after notice to adjoining property owners and an opportunity for all parties to be heard. These decisions could become final unless appealed to the Planning Commission or City Commission. This might provide some easing in the time constraints now established by State law.

Would the Commission please be prepared for the first meeting in September to submit any recommendation you may wish to submit to the Board of City Commissioners.

RAL:ber

Houston report -

BCC action to R+7. add Re recommendation of liberalized
of plan

circulated to

- City's
- Real Estate
- ZAC
- Environmental Task Force - had use
- Coalition Planning
- Model Cities Task Force

Reply from
Lambert

Too long to get zoning passed -

SA's + zoning

- Comm.
- Statutory - going on 7
 - Challenging.

Boquet.

no need to hire attorney

Admin procedure to change -

cont. zoning

broaden classes

- No need now - some better represented by themselves.
- Even hearing opponents follow a legislative act consent.
- legislative revision - see legal opinion.

being done. offered to do so at same time we did R-5/R-6.

Low-

leave to ZAC

Coombs -

too expensive, time consuming.

good with the staff

opposed to conditional zoning.

due to nature of advisory process legislative.

- need staff.

waso finis
why's utilized in decision

being done -

Sanderson:

Set policies for those areas
which you are pulling together on

increase depth -

new major will do -
not bad idea -

{ do so now but need increasing
protection.
I'll keep depends on built on
II p block.

no reflect -

quid / quo.

legislation to require at body
permit time

broader BB -

tried to do at R-5
ZAC is doing this.

Calvin.

1. Use FAR's & LC's rather than
not back.

Q <

2. CUP in small area I'll

?

3. Staff changes ^{when no.}
protect

Project beauty
Stronger Sing controls.

Don't feel.

Home Bldg.

give considerable weight to
history as well future in.

ZAC @ 45% -

? in reviewing.

new school projects
new houses being built.

Quayson -

Heggen -

Weather policies: then some at 4:1 -
moderation + of pressure decrease.

reflections.

Wants hearings before BCC

general pros cons -

arguments not made -

SSE Schupfer,

lid -

ayer


Mr. Tom B Guinan, Project Beauty, Inc.

1. Signs / off-pave billboards.
2. Stronger zoning laws -
- against strips;

Rising - stronger control of signs

Guinan - Possible signs possible resolution -

Sandlian -

- Reflating 

↳ when

* - Expand BB - = B-1
but like zoning BB so it would be already zoning.

⇒ Deepen ↙ lots

Kellogg -

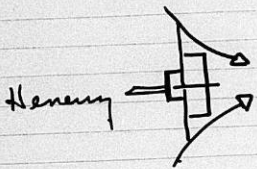
Hamm

West -

- Identify area - for future area $\left\{ \begin{array}{l} \text{- new map} \\ \text{part} \end{array} \right.$

- Industrial land -
much of " " poorly located - use good land for
industrial land.

Diane Winter



ZAC -