

PLAT NO. S/D 70-72 MAP NO. 5747

NAME ALCON 2ND ADDITION

LOCATION At the northeast corner of Hillside and
Waterman

ENGINEER Baughman Company

OWNER Alfred A. Caro

APPLICATION FILED 12-28-70

SKETCH PLAT FILED 12-28-70

PRELIMINARY FILED None

S/D ACTION N/A

FINAL FILED 12-28-70

S/D ACTION 1-7-71 Approve

MAPC ACTION 1-14-71 Refer Back to S/D Comm

BCC ACTION + 6-8-71 Approve as recommended

RECORDED 12-16-71

REMARKS *1-31-71 S/D Comm. Refer
2-4-71 S/D Comm Refer
3-18-71 S/D Comm. Reapprove
3-11-71 Map C Approve
3-23-71 BCC Return to Mapc
4-8-71 Mapc Refer
4-22-71 Mapc Refer
+ 5-13-71 Mapc Refer

S/D 70-72 - ALCON 2ND ADDITION - At
 the northeast corner of Hillside and
 Waterman Baughman Company

ACTION

	DATE
S/D COMMITTEE (final)	1-2-71
"	Refer 1-21-71
M.A.P.C.	refer back to S/D 1-14-71
B.C.C.	
S/D Comm.	Refer 2-4-71
S/D Comm.	Reapprove 2-18-71
Mape	Approve 3-11-71
BCC	Return to Mape 3-23-71 (Require soft. setback)
Mape	Refer 4-8-71
Mape	Refer 4-23-71
Mape	Reapprove 5-13-71
BCC	Approve as 6-8-71 Recommended 6-17-71

Map No. 5747
Sec. No. 23
Twp. No. 27 S
Range 1 E

Subdivision Report and Progress
S/D No.: 70-72

Name: ALCON 2ND ADDITION

General Location: At the northeast corner of Hillside and Waterman

Owner: Alfred A. Caro
Address: 2604 East Central (14) Phone: MU 3-2664
Subdivider: Same as William P. Higgins
Address: 313 First Nat. Bank Bldg. Phone: 263-6148
Engineer/Surveyor: Baughman Company
Address: 2522 East Kellogg (11) Phone: 683-7431

Application Received 12-28-70
Conf. with Applicant None
Sketch Plat Received 12-28-70
Present Zoning "A"
* Proposed Zoning "LC"
Letter of Intent None

PREL. PLAT RECEIVED None
S/D Comm. Action N/A

Dept. Report on Prel. N/A

TRACING PROGRESS:
Received 10-6-61
Released
Received 10-13-71
Released

FINAL PLAT RECEIVED 12-28-70
S/D Comm. Action 1-7-71 Approve

Dept. Report on Final 1-8-71
*M.A.P.C. ACTION 1-14-71 refer back to S/D
Dept. Report on Final 1-15-71
Letter on Irons Received N/A
Title/Taxes Rec'd & Reviewed 7-8-71
Final Review
Referral to B.C.C.

B.C.C. ACTION SEE BELOW
Recorded 12-16-71

Comments:

*2-1076 Associated zone cases
*2-1220- A to LC approved by the City Commission
Subject to replatting.
*1-21-71 S/D Committee Refer
2-4-71 " " Refer
2-18-71 S/D COMMITTEE Reapprove
*3-11-71 Maps Approve
3-23-71 BCC Return to Maps
4-8-71 Maps Refer
4-22-71 Maps Refer
5-13-71 Maps Reapprove
6-8-71 BCC Approve as recommended
11-9-71 Released tracing to Bill Higgins for recording

728
12-27-71



REGISTER OF DEEDS

SEDGWICK COUNTY, KANSAS

_____ Alcon 2nd _____ ADDITION was

filed for record on December 16, 1971

S-1 8-16
79
lm

John Hale

Register Of Deeds

T9-328

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

July 7, 1971

263-6148
AREA CODE 316

WILLIAM P. HIGGINS
JOHN W. BRIMER

Mr. John D. Gist
Principal Planner
Metropolitan Area Planning Department
City Building Annex
Wichita, Kansas 67202

Re: S/D 70-72 - Final Plat of
Alcon 2nd Addition

Dear John:

Enclosed please find the tax and ownership information requested for the final plat of Alcon 2nd Addition in conformity with our telephone conference of the 6th. I am assuming this is all we will need other than the corrected tracing. If I am mistaken or this is inadequate, please let me know.

Yours truly,

HIGGINS & BRIMER

By

William P. Higgins
William P. Higgins

WPH:nm
Enclosure



CHICAGO TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

CHICAGO TITLE INSURANCE COMPANY, a corporation of Missouri, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused this Commitment to be signed and sealed as of the effective date of Commitment shown in Schedule A, the Commitment to become valid when countersigned by an authorized signatory.

CHICAGO TITLE INSURANCE COMPANY

By:

Issued by:
THE SECURITY ABSTRACT &
TITLE COMPANY, INC.
434 North Main Street
Wichita, Kansas 67202
(316) AMherst 7-8371

Alvin W. Long
President.

ATTEST:

Lu Bell
Authorized Signatory



Chester C. McCullough
Secretary.

A.L.T.A. COMMITMENT

FORM 3361

SCHEDULE A

Effective Date

June 30, 1971 at 7:00 A. M.

Number
180200

1. Policy or Policies to be issued:

OWNER'S: ALTA Fm B 1970 \$

Proposed Insured:

The City of Wichita

LOAN: \$

Proposed Insured:

2. The estate or interest in the land described or referred to in this Commitment and covered herein is a fee simple, and title thereto is at the effective date hereof vested in:
Alfred A. Caro (as to Lots 1, 3, 5, 7, 13 and 15)
Herbert W. McClelland and Leona K. McClelland, husband and wife, (as to Lots 9 & 11)
3. The land referred to in the Commitment is described in Schedule C.

SCHEDULE B — Section 1

The following are the requirements to be complied with:

1. Instrument(s) creating the estate or interest to be insured must be approved, executed and filed for record, to wit:

2. Payment of the full consideration to, or for the account of, the grantors or mortgagors.

3. Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable. * See below for taxes.

4. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, subcontractors, labor and materialmen are all paid.

* Taxes for the year 1970, amount \$356.64, Paid. - Key #C-6395 (Covers Lots 1 & 3)
Taxes for the year 1970, amount \$317.03, Paid. - Key #C-6396 (Covers Lots 5 & 7)
Taxes for the year 1970, amount \$383.57, Paid. - Key #C-6397 (Covers Lots 9 & 11)
Taxes for the year 1970, amount \$322.31, Paid. - Key #C-6398 (Covers Lots 13 & 15)

A.L.T.A. COMMITMENT

SCHEDULE B — continued

FORM 3362

Number

180200

SCHEDULE B — Section 2

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any owner's policy issued pursuant hereto will contain under Schedule B the standard exceptions set forth at the inside cover hereof. Any loan policy will contain under Schedule B standard Exceptions 1, 2 and 3 unless a satisfactory survey and inspection of the premises is made.
3. Taxes or special assessments which have not been certified to the Office of the County Treasurer and entered on the tax rolls thereof prior to the date hereof.
4. Mortgage dated August 9, 1962, executed by Nelson C. Rust and Alice E. Rust, husband and wife, to Friman-Gentry Mortgage Company, recorded August 10, 1962, in Book 1442, Page 490, to secure their note for \$8,750.00; and Assigned unto Security Savings and Loan Association. (Covers only Lots 13 and 15)
5. Mortgage dated June 2, 1965, executed by Arthur Ronald Maynard and Julia Ann Maynard, to Mercury Mortgage Company, recorded June 3, 1965, in Book 1532, Page 345, to secure their note for \$10,300.00; and Assigned unto First Federal Savings and Loan Association. (Covers only Lots 1 and 3)

A.L.T.A. COMMITMENT

FORM 3363

SCHEDULE C

Number

180200

The land referred to in this Commitment is described as follows:

Lots 1, 3, 5, 7, 9, 11, 13 and 15, on Hillside Avenue, in Hillside Subdivision of the College Hill Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

STANDARD EXCEPTIONS FOR OWNER'S POLICY

The owner's policy will be subject to the mortgage, if any, noted under item one of Section 1 of Schedule B hereof and to the following exceptions: (1) rights or claims of parties in possession not shown by the public records; (2) encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises; (3) easements, or claims of easements, not shown by the public records; (4) any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records; (5) taxes or special assessments which are not shown as existing liens by the public records.

CONDITIONS AND STIPULATIONS

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

June 14, 1971

Mr. William P. Higgins
313 First National Bank Building
Wichita, Kansas 67202

Subject: S/D 70-72 - Final Plat of
Alcon 2nd Addition

Dear Mr. Higgins:

I have been advised by Bob Lakin, Planning Director, that at their regular meeting on June 8, 1971, the Board of City Commissioners approved the above captioned plat and required the 35 foot building setback from Hillside as had been recommended by the Planning Commission. You will recall that the plat had been forwarded to the City Commission originally on an appeal basis, and the conditions of approval (see conditions 1, 2, 3, 4 and 6 of my previous letter dated January 8, 1971), as well as submission of the completed and signed plat tracing along with certification of fee title and taxes being paid, must be completed prior to the return of the plat tracing to the applicant for recording.

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

Sincerely,

John D. Gist
Principal Planner

JDG:ls

cc Alfred A. Caro, 2604 East Central 67214
Saughaman Company, 2522 East Kellogg 67211

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO
BOARD OF CITY COMMISSIONERS

SUBDIVISION APPROVAL

S/D Number	70-72	Name	ALCON 2ND ADDITION	
Application Filed:	12-28-70	Sketch Filed:		12-28-70
Preliminary Plat Filed:	None	Approved by S/D:		N/A
Final Plat Filed:	12-28-70	Approved by S/D:		2-18-71
Approved by Metropolitan Area Planning Commission:				3-11-71
Considered by Board of City Commissioners:				3-23-71
Reconsidered by MAPC:				5-13-71

General Location: DESCRIPTION

General Location: Northeast corner of Hillside and Waterman

Surveyor or Engineer: Baughman Company
Owner: Alfred A. Caro
Address: 2604 East Central

- | | | | |
|--------------------------|-----------------------------|--|----------|
| 1. Gross Acreage of Plat | <u>0.65</u> | 5. Lineal Feet of New Streets: | |
| 2. Number of Lots: | | a. <u>20</u> R/W <u>201.74</u> ft. | |
| Residential | <u> </u> | b. <u> </u> R/W <u> </u> ft. | |
| Commercial | <u>1</u> | c. <u> </u> R/W <u> </u> ft. | |
| Industrial | <u> </u> | d. <u> </u> R/W <u> </u> ft. | |
| Other | <u> </u> | e. <u> </u> R/W <u> </u> ft. | |
| Total Number of Lots: | <u>1</u> | TOTAL <u>201.74</u> ft. | |
| 3. Minimum Lot Frontage: | <u>201.74</u> ft. | 6. Existing Zoning: | <u>A</u> |
| 4. Minimum Lot Area | <u>28,200</u> sq.ft. | | |

NOTE: The Board of City Commissioners considered this plat on March 23, 1971, and took action to return the plat to the Planning Commission for reconsideration and reappraisal of a 20-foot setback from Hillside rather than the recommended setback of 35 feet.

Planning Commission Recommendation:

TAYLOR moved and JACKSON seconded that the Planning Commission recommend to the City Commission that the Planning Commission reaffirm its recommendation made on March 11, 1971, which included a dedication of 20 feet for Hillside and a 35-foot setback from the new property line, but the guarantee for the relocation of the sidewalk was not required.

(See attached sheet for other conditions.)

Vote of Planning Commission: Motion carried by a vote of 7 in favor (Taylor, Jackson, Kamen, Rising, Burnett, Souders and Blakey) and 1 opposed (Hennessy).

- ACTION:
1. Approve the plat as approved by the Metropolitan Area Planning Commission and authorize the Mayor to sign, and instruct the Planning Department to withhold release of the final plat tracing for recording until all conditions have been complied with; or
 2. Take such action as the Commission deems appropriate.

CONDITIONS OF APPROVAL - S/D 70-72 - Final Plat of
ALCON 2ND ADDITION

- OK* There appears to be an error in the distance indicated for the legal tie. This should be checked by the applicant's surveyor and the necessary corrections made.
- OK* The texts for approval and acceptance by the City and County Commissioners shall be changed to read as follows: "This plat approved and the dedications shown herein, accepted by the Board....".
- OK* The 15-foot setback indicated from the north line of Waterman shall be increased to 20 feet.
- OK* Twenty feet of additional right-of-way shall be indicated for Hillside, both on the face of the plat and with the appropriate accompanying language in the plat's text. The 35-foot building setback from Hillside shall then be adjusted from the new right-of-way line accordingly.
5. In the event the Department of Public Works approves a minor street privilege for use of the 20-foot street dedication on Hillside, the Planning Commission recommends that the guarantee for relocation of the sidewalk not be required.
- OK* 6. Recording of the plat within 30 days after approval by the Board of City Commissioners.

ALSO NEEDED

1. *need corporate seal for First Federal of Coffeyville*
Submission of the fully completed and signed tracing of the subdivision to the Metropolitan Area Planning Department.
- OK* 2. Certification by an attorney that fee title is vested in the plattor.
- OK* 3. Certification that all taxes due and payable for 1970 and prior years have been paid.

May 14, 1971

Mr. William P. Higgins
Attorney at Law
313 First National Bank Building
Wichita, Kansas 67202

Re: S/D 70-72 - Final Plat of
ALCON 2ND ADDITION

Dear Mr. Higgins:

At the regular meeting of the Metropolitan Area Planning Commission on May 13, 1971, the above-captioned plat was reconsidered. It was the action of the Planning Commission to reaffirm its recommendation made on March 11, 1971 and as pointed out to you in our letter of March 12, 1971. This action to reapprove the plat was subject to the 35-foot setback from the 20-foot dedication for Hillside and also included recommending to the City Commission that the guarantee for the relocation of the sidewalk not be required.

Based on your original request for desiring to appeal the requirement of a 35-foot setback from Hillside, this is to advise you that we will forward the plat back to the Board of City Commissioners for their reconsideration at the meeting of June 1, 1971, starting at 9:00 a.m. in Room 201 City Building, 204 South Main.

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

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber

cc: Alfred A. Caro, 2604 East Central 67214
Baughman Company, 2522 East Kellogg 67211
Ray Bruggeman, Director of Public Works
Dick Linn, City Engineer

May 7, 1971

Mr. William P. Higgins
Attorney
313 First National Bank Building
Wichita, Kansas 67202

Subject: S/D 70-72 - ALCON 2ND
ADDITION

Dear Bill:

Attached is a report I am submitting to the Planning Commission in connection with Alcon 2nd Addition. Also you will find attached a copy of the opinion that Dekker has furnished this Department. After you have had an opportunity to read it, please give me a call if you have any questions.

Sincerely,

Robert A. Lakin
Director of Planning

RAL:ber
Attachment

May 7, 1971

Mr. William P. Higgins
Attorney
313 First National Bank Building
Wichita, Kansas 67202

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Sincerely,

Robert A. Lakin
Director of Planning

RAL:ber

Attachment

May 7, 1971

Wichita-Sedgwick County Metropolitan
Area Planning Commission

Robert A. Lakin, Director of Planning

Report on Plats in "IC" Districts
Deviation from 35-foot Setback Lines

The following information was developed by an examination of our
files concerning platting from January 1968 to March 1971:

Total number of plats processed from January 1968 to March 1971	337
Total number of "IC" plats adjacent to major streets processed from January 1968 to March 1971	152
Total number of above "IC" plats on which setback varied from 35-foot standard	13

CASE RECORD BY YEAR

<u>Year</u>	<u>Total No. of Plats</u>	<u>No. of "IC" Plats</u>	<u>No. of "IC" plats which varied from 35 feet</u>
1968	134	54	3
1969	111	59	4
1970	75	28	4
Mar 1971	17	10	2
Total	337	151	13

"IC" PLATS ADJACENT TO MAJOR STREET ON WHICH
SETBACK WAS VARIED

<u>Year</u>	<u>Adj. to Front Rd.</u>	<u>Existing Structures</u>	<u>Undeveloped Land</u>
1968		DeNeen-Klement 2nd Joy Addition	Woodlawn Plaza
1969	Dody Cole Add.	Lingreen Addition	Womers Pleasant Valley 2nd Goldman Addition
1970	R.L.S.Addition		Unruh Addition Thurman Moore Alcon 2nd Add.
1971		Stevens 2nd Add.	Hall-King 2nd Add.

Page 2 - Metropolitan Area Planning Commission
May 7, 1971

Of the 13 plats on which there were deviations, those adjacent to frontage roads and those involving existing structures, in our opinion, are not comparable to the situation being discussed in Alcon 2nd Addition. This leaves, then, the plats of Woodlawn Plaza, Womers Pleasant Valley 2nd, Goldman Addition, Unruh Addition, Thurman Moore Addition, Alcon 2nd Addition, and Hall-King 2nd Addition as those exceptions. In each instance, there are special circumstances which either the Staff or the Commission believed justified deviation from the normal policy. We will have these plats available for review at the Commission meeting.

RAL:ber

Attachment A - Memo from RAL to MAPC
Subject: Alcon 2nd Addition
Dated: May 7, 1971

May 7, 1971

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

S/D 70-72 - ALCON 2ND ADDITION

At the City Commission meeting of March 23, 1971, the City Commission agreed to approving a 20-foot setback from Hillside rather than the recommended 35-foot setback line suggested by the Planning Commission. The then City Commission was advised that it was the opinion of the staff that it had to be returned to the Planning Commission for concurrence before the plat could be approved. Subsequent to this action, two things have occurred:

1. The Planning Commission has asked for a report on the policy followed concerning the use of the 35-foot setback line as a condition in like commercial plats. A report is attached to this memorandum.
2. The Department has received a legal opinion from the Law Department which, in our opinion, states that the plat of Alcon 2nd Addition did not have to be returned to the Planning Commission for action in order to modify the 35-foot requirement established by the Planning Commission. However, in the action taken by the City Commission, they did not approve the 20-foot, but only recommended approval of and return to the Planning Commission. The City Commission must again act on the request for the 20-foot setback due to the nature of the motion made at the City Commission meeting.

The Planning Commission, then, based on the advice of the Law Department in their legal opinion, need not, if they care not to do so, take any additional action on the plat of Alcon 2nd Addition, but may return it to the City Commission with or without comment. The City Commission may then take such action as it deems appropriate in establishing the setback. All other conditions of plat approval previously made by the Planning Commission and City Commission should remain unchanged.

RAL:ber

Attachment

May 7, 1971

Wichita-Sedgwick County Metropolitan
Area Planning Commission

Robert A. Lakin, Director of Planning

Report on Plats in "LC" Districts
Deviation from 35-foot Setback Lines

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Total number of above "LC" plats on which setback varied from 35-foot standard	13

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"LC" PLATS ADJACENT TO MAJOR STREET ON WHICH
SETBACK WAS VARIED

<u>Year</u>	<u>Adj. to Front Rd.</u>	<u>Existing Structures</u>	<u>Undeveloped Land</u>
1968		DeNeen-Klement 2nd Joy Addition	Woodlawn Plaza
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Page 2 - Metropolitan Area Planning Commission
May 7, 1971

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RAL:ber

Attachment A - Memo from RAL to MAPC
Subject: Alcon 2nd Addition
Dated: May 7, 1971

May 7, 1971

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

S/D 70-72 - ALCON 2ND ADDITION

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1. The Planning Commission has asked for a report on the policy followed concerning the use of the 35-foot setback line as a condition in like commercial plats. A report is attached to this memorandum.
2. The Department has received a legal opinion from the Law Department which, in our opinion, states that the plat of Alcon 2nd Addition did not have to be returned to the Planning Commission for action in order to modify the 35-foot requirement established by the Planning Commission. However, in the action taken by the City Commission, they did not approve the 20-foot, but only recommended approval of and return to the Planning Commission. The City Commission must again act on the request for the 20-foot setback due to the nature of the motion made at the City Commission meeting.

The Planning Commission, then, based on the advice of the Law Department in their legal opinion, need not, if they care not to do so, take any additional action on the plat of Alcon 2nd Addition, but may return it to the City Commission with or without comment. The City Commission may then take such action as it deems appropriate in establishing the setback. All other conditions of plat approval previously made by the Planning Commission and City Commission should remain unchanged.

RAL:ber

Attachment

April 23, 1971

Mr. William P. Higgins
Attorney
313 First National Bank Building
Wichita, Kansas 67202

Re: S/D 70-72 - Final Plat of
ALCON 2ND ADDITION

Dear Mr. Higgins:

At the regular meeting of the Metropolitan Area Planning Commission on April 22, 1971, the above-captioned plat was reconsidered. The action of the Planning Commission was to defer this plat for further consideration at their next regular meeting on May 13, 1971, at 1:30 p.m. in Room 401 City Building Annex.

At your request, attached is a copy of the legal opinion forwarded to us by the Director of Law.

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

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber
Attachment

cc: Alfred A. Caro
2604 East Central
Wichita, Kansas 67214

THE CITY OF WICHITA

OFFICE OF LAW DEPARTMENT

DATE April 22, 1971

TO Robert A. Lakin, Director of Planning

FROM John Dekker, Director of Law

SUBJECT Policy Settlement - Extension
of Time re Platting as a
Condition of Zoning Change
Approval

Attached hereto is a memorandum from H. R. Kuhn, written in response
to your memo of April 9, 1971.

John Dekker
John Dekker
Director of Law

JD:cr
Attachment



THE CITY OF WICHITA
OFFICE OF LAW DEPARTMENT



April 20, 1971

THE
ROAD TO
SAFETY



TO JOHN DEKKER, Director of Law
FROM H. R. KUHN, Assistant City Attorney

SUBJECT Policy Settlement-Extension
of Time re Platting as a
Condition of Zoning Change
Approval

In response to your inquiry of April 9, 1971, concerning the questions posed by Bob Lakin, this is to advise that I have reviewed the applicable law and have personally visited with both Lakin and Galbraith.

It is my opinion that all three questions posed by Lakin should be answered in the affirmative since the City Commission, as the governing body, has the final say-so and is charged with the responsibility of taking the final action. The rule enunciated by the Supreme Court in 1967 in the case of Burke and McCaffrey, Inc. v. City of Merriam, 198 Kan. 325, fairly well covers the issues presented. The Supreme Court stated on Page 327 as follows:

"Moreover, under K.S.A. 12-705 the function of the planning commission is advisory only, its authority being limited to a study of the facts and submission of its recommendations to the governing body wherein authority to take final action lies."

Chapter 12-705 is the State Statute governing the matter or question of subdivisions or plats. A careful reading of said section readily shows, as the Supreme Court points out, that the function or jurisdiction of the planning commission is permissive and said section in no way purports to elevate the findings and determinations of a planning commission to a position superior to that of the appropriate governing bodies.

(It might be well to note here that Sections 705(a), (b) and (c) of Chapter 12 do not apply to Wichita since we are operating under Chapter 12-716 to 12-724.)

A review of Chapter 12-716 through 724 again reveals a lack of language which would grant to the planning commission the final determination of the issues presented in Bob Lakin's memo. On the contrary, the language seems to make it rather clear that the function of the planning commission is to make recommendations to the governing bodies involved.

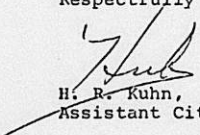
John Dekker, Director of Law
April 20, 1971
Page -2-

A review of both Ordinance and Resolution No. 29-610 adopted by the City and County December 6, 1967, and December 19, 1967, and the accompanying agreement dated December 19, 1967, again would seem to recognize the planning commission as an advisory body to both governing bodies and repeatedly refer to "recommendations".

In summary, a review of the above referenced material does not delegate the final authority to the planning commission on the issues presented in the memo. Some of the phraseology used in the subdivision regulations which might be otherwise interpreted could not, in my opinion, enlarge the jurisdiction or authority of the planning commission so as to divest the governing bodies of the right to make the final determination.

If anything further is needed of me, I will be pleased to hear from you.

Respectfully submitted,


H. R. Kuhn,
Assistant City Attorney

HRK:jh

April 9, 1971

Mr. William P. Higgins
Attorney
313 First National Bank Building
Wichita, Kansas 67202

Re: S/D 70-72 - Final Plat of
ALCON 2ND ADDITION

Dear Mr. Higgins:

At the regular meeting of the Metropolitan Area Planning Commission on April 8, 1971, the above-captioned plat was reconsidered. The action of the Planning Commission was to defer this plat for two weeks so that we could investigate all light commercial plats that have occurred on major streets to determine those where the normal 35-foot setback was not required and for what reasons. We will begin checking our files for any such plats which have occurred in the last three years. As you stated at the meeting, if you can call any particular plats to our attention, we will appreciate the information.

This matter will be rescheduled for the Planning Commission meeting of April 22, 1971, at 1:30 p.m. in the Planning Commission Meeting Room in the City Building Annex.

If you have any questions, please call.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber

cc: Alfred A. Caro
2604 East Central
Wichita, Kansas 67214

March 23, 1971

Mr. William P. Higgins
313 First National Bank Building
Wichita, Kansas 67202

Subject: S/D 70-72 - Alcon Addition
NE corner of Hillside and Waterman

Dear Mr. Higgins:

Based on the City Commission action this morning to return the above captioned plat to the Planning Commission for reconsideration and reapproval of a 20 foot setback from Hillside rather than the recommended 35 foot setback, this is to advise you that this plat will be placed on the agenda for the next regular meeting of the Planning Commission on April 8, 1971, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main, Wichita, Kansas.

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

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ls
cc Alfred A. Caro, 2604 East Central 67214

March 23, 1971

Ralph Eberly, City Clerk

Jack H. Galbraith, Chief Planner

S/D 70-72 - Alcon 2ND ADDITION - At the northeast corner
of Hillside and Waterman

This is to clarify my interpretation of the City Commission action this morning concerning the above captioned case. So that this plat will not have to again be referred to the Board of City Commissioners, my interpretation of their action is as follows:

They approved the plat as approved by the Metropolitan Area Planning Commission except that a 20 foot setback from Hillside was required instead of a 35 foot setback; they authorized the Mayor to sign and they instructed the Planning Department to withhold release of the final plat tracing for recording until all conditions have been complied with; and they returned the plat to the MAPC for reapproval stating that the reason for their action was because of the existing office building to the north maintaining only a 20 foot building setback.

If you concur that this was the action taken this morning, this would not require the plat being again referred to the City Commission after being reapproved by the Planning Commission and providing that the Planning Commission concurs with the 20 foot setback.

Please advise if there are any questions concerning this matter.

JHG:ls

3/23/71

Ralph Eberly called that he does not agree with my interpretation of the CC action and that he is of the opinion that the plat must be returned to the CC for approval.

March 18, 1971

Ralph Wulz, City Manager

Jack H. Galbraith, Chief Planner

Appeal of S/D 70-72, Final Plat of ALCON 2ND ADDITION
Northeast corner of Hillside and Waterman

Bill Higgins, attorney for the applicant on the above-captioned plat, has requested that this plat be referred to the Board of City Commissioners as he desires to appeal the requirement of a 35-foot setback from the 50-foot half-street right-of-way line. You will recall this plat is in the area on the east side of Hillside where the City Commission has in the last six months approved two requests for light commercial zoning. This is in an area between Kellogg and Douglas where the Planning Commission originally had a policy of looking with favor only on the "BB" Office District, and as a result the Schaefer Schirmer and Eflin office building only complied with the 20-foot setback required in the "BB" Office District.

Since the plat of Alcon 2nd Addition is in the same block, Higgins maintains that they should only have to comply with the 20-foot setback. The Planning Commission took the position that since light commercial has been approved in this area and since Bob Nelson's plat at Lewis and Hillside complied with the 35-foot setback requirement, and inasmuch as there will undoubtedly be other requests for light commercial, that the setback should now comply with the 35-foot setback policy for the light commercial areas.

Attached are the minutes of the Planning Commission, which you may desire to furnish separately to the Board of City Commissioners. Please call if you have any questions.

JHG:ber

Attachment

EXCERPT FROM PLANNING COMMISSION MINUTES OF MARCH 11, 1971.

7. S/D 70-72 - Final Plat of ALCON 2ND ADDITION, generally located at the northeast corner of Hillside and Waterman.

GALBRAITH pointed out that subject property has previously been approved for "LC" zoning, subject to replatting, and that at the Subdivision Committee hearing the applicant was not agreeable to providing a 35-foot setback from the new right-of-way line on Hillside Avenue. GALBRAITH pointed out that recently at Hillside and Lewis where "LC" zoning was also granted, a contingent dedication was accepted by the City Commission for the 20-foot dedication for Hillside, but that a 35-foot setback was provided back from the contingent dedication. He also referred to the southeast corner at English and Hillside where "BB" zoning was approved for an architectural firm and that 20 feet of setback was required from the new line established by dedication of 20 feet for additional right-of-way, this being in accordance with the policy on setbacks in "BB" Office zoning.

GALBRAITH said that at the Subdivision Committee hearing, one of the Planning Commissioners present (Bledsoe) favored adhering to the policy of a 35-foot setback in "LC", while another Commissioner (Rennessey) favored only a 20-foot setback because of the 20 feet of setback required on the architectural property to the north in the same block.

GALBRAITH indicated a possible trend was occurring of conversion of residential properties to Light Commercial in an approximate three block area between English and Kellogg, because of recent actions of the City Commission on the requests for "LC" on this application area and at Hillside and Lewis. He said the staff concern is related to the development standards to be required on "LC" along Hillside, and it was his opinion that the 35-foot setback should be adhered to as on the application at Lewis and Hillside. GALBRAITH stated it was his understanding the applicant has obtained preliminary approval of a minor street privilege to use the 20 feet of additional right-of-way required for Hillside.

WILLIAM P. HIGGINS, attorney for the applicant, said he did not think the Commission should determine policy every time there is a zoning case, but that policies have to be determined on the basis of the best use and on the basis of conditions present at the time the case is considered. He pointed out that Hillside has only recently been improved to a wider street and that new sidewalks have been constructed, but that they are being required to guarantee a new sidewalk at the property line after the 20 feet of additional right-of-way is dedicated for Hillside. He pointed out that by the time the dedication is made and a 35-foot setback observed, the lots along Hillside in this area

will be so small as to be almost negligible
that you'll be able to construct a line
through the property, raised slightly
above the dedication of water at
street and the 12-foot utility easement,
providing a 70-foot roadway.

It is noted that the proposed
roadway will be a narrow strip
of land, and the utility easement
will be a narrow strip of land
along the street. The proposed
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will be a narrow strip of land
along the street.

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will be a narrow strip of land
along the street.

will be so small as to be almost undevelopable for "LC" because they won't be able to construct a building of sufficient size to properly use the property. KAMEN commented that taking into consideration the dedication of street right-of-way, the 35-foot setback and the 19-foot utility easement, the applicant could still construct a 74.6-foot building.

HIGGINS pointed out that in granting the zoning, they were allowed two openings onto Hillside and that they are contemplating building either a diamond shaped structure, or place a structure on one side with parking on the other portion of the site, but they need the additional 15 feet of property unrestricted by setbacks. HIGGINS stated there is a 10-foot utility easement along the rear which also lessens the amount of site available for structures.

HIGGINS maintained that it would be silly to have different setback requirements on a street which has just been completed and which will probably not be changed for 25 years, and he did not see the logic in a 20-foot setback and 35-foot setback in the same block. HIGGINS referred to the uses permitted in the two zoning districts and the fact that "LC" zoning requirements vary in traffic and parking needs, and while the architectural firm ("BB" zoning) at English does not have any "LC" usage, their traffic and parking requirements for employees and clients could be more than in some uses in "LC".

HIGGINS again mentioned that they need the additional 15 feet to properly develop subject property.

KAMEN pointed out that if the Commission approved only a 20-foot setback in this case, others would expect the same treatment along this street. HIGGINS said he considered this street different from most because it has so recently been improved and widened and new sidewalks installed.

During the discussion, GALBRAITH said that if Public Works has agreed to grant a minor street privilege for the 20 feet of additional right-of-way on Hillside, he considered it reasonable to suggest that the sidewalk not be reconstructed as long as such privilege is in affect.

JOHN GIST, Principal Planner, said that at the Subdivision Committee meeting representatives of Public Works indicated that the filing of a petition for the new sidewalk was the preferred method of guaranteeing such construction, and that as long as a minor street privilege was in effect, the new sidewalk would not be installed. It was also mentioned that Public Works would probably not install the new sidewalk until it could be constructed for the entire block rather than for just adjacent to this plat.

KAMEN said he could understand the position taken by Mr. Higgins and his client, but felt that there would be future problems unless the 35-foot setback is required.

MOTION: KAMEN moved, JACKSON seconded and it carried unanimously that the applicant not be required to guarantee the relocation of the sidewalks on Hillside, and that, since "LC" has been granted for subject property, the 35-foot setback be required instead of the 20-foot setback required for the "BB" Office District; and that the Planning Commission recommend to the City Commission that this plat be approved, subject to the following:

1. There appears to be an error in the distance indicated for the legal tie. This should be checked by the applicant's surveyor and the necessary corrections made.
 2. The texts for approval and acceptance by the City and County Commissioners shall be changed to read as follows: "This plat approved and the dedications shown herein, accepted by the Board....".
 3. The 15-foot setback indicated from the north line of Waterman shall be increased to 20 feet.
 4. Twenty feet of additional right-of-way shall be indicated for Hillside, both on the face of the plat and with the appropriate accompanying language in the plat's text. The 35-foot building setback from Hillside shall then be adjusted from the new right-of-way line accordingly.
 5. In the event the Department of Public Works approves a minor street privilege for use of the 20-foot street dedication on Hillside, the Planning Commission recommends that the guarantee for relocation of the sidewalk not be required.
 6. Recording of the plat within 30 days after approval by the Board of City Commissioners.
-

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO
BOARD OF CITY COMMISSIONERS

SUBDIVISION APPROVAL

S/D Number	70-72	Name	ALCON 2ND ADDITION
Application Filed:	12-28-70	Sketch Filed:	12-28-70
Preliminary Plat Filed:	None	Approved by S/D:	N/A
Final Plat Filed:	12-28-70	Approved by S/D:	2-18-71
Approved by Metropolitan Area Planning Commission:			3-11-71

DESCRIPTION

General Location: Northeast corner of
Hillside and Waterman

Surveyor or Engineer: Baughman Company
Owner: Alfred A. Caro
Address: 2604 East Central

- | | | |
|--------------------------|----------------------|------------------------------------|
| 1. Gross Acreage of Plat | <u>0.65</u> | 5. Lineal Feet of New Streets: |
| 2. Number of Lots: | | a. <u>20</u> R/W <u>201.74</u> ft. |
| Residential | _____ | b. _____ R/W _____ ft. |
| Commercial | <u>1</u> | c. _____ R/W _____ ft. |
| Industrial | _____ | d. _____ R/W _____ ft. |
| Other | _____ | e. _____ R/W _____ ft. |
| Total Number of Lots: | <u>1</u> | TOTAL <u>201.74</u> ft. |
| 3. Minimum Lot Frontage: | <u>201.74</u> ft. | 6. Existing Zoning: <u>"A"</u> |
| 4. Minimum Lot Area | <u>28,200</u> sq.ft. | |

NOTE: The applicant has requested that this plat be referred to the Board of City Commissioners as they desire to appeal that part of condition number 4 relative to a building setback from Hillside.

Planning Commission Recommendation:

KAMEN moved and JACKSON seconded that the applicant not be required to guarantee the relocation of the sidewalks on Hillside, and that, since "LC" has been granted for subject property, the 35-foot setback be required instead of the 20-foot setback required for the "BB" Office District, and that the Planning Commission recommend to the City Commission that this plat be approved, subject to the following:

(See attached sheet for conditions.)

Vote of Planning Commission: Unanimous.

ACTION: 1. Approve the plat as approved by the Metropolitan Area Planning Commission and authorize the Mayor to sign, and instruct the Planning Department to withhold release of the final plat tracing for recording until all conditions have been complied with; or
2. Return the plat to the Metropolitan Area Planning Commission for reapproval. The City Commission states the following reasons for its action:

March 12, 1971

Mr. William P. Higgins
Attorney at Law
313 First National Bank Building
Wichita, Kansas 67202

Re: S/D 70-72 - Final Plat of
ALCON 2ND ADDITION

Dear Mr. Higgins:

At the regular meeting of the Metropolitan Area Planning Commission on March 11, 1971, the above-captioned plat was considered. Specifically, the Planning Commission discussed the appropriate setback from the 20-foot dedication line as being either 20 or 35 feet. It was the action of the Planning Commission to approve the plat subject to a 35-foot setback from the 20-foot dedication for Hillside.

In addition, the Planning Commission considered the requirement of guaranteeing the installation of a new sidewalk to be constructed adjacent to the new property line. Since it was reported that the Department of Public Works has agreed to grant a minor street privilege for the use of the 20-foot dedication area for off-street parking, it was the action of the Planning Commission to recommend that the guarantee for the relocation of the sidewalk not be required.

It was therefore the recommendation of the Planning Commission to approve the plat, subject to these conditions as well as being subject to conditions one, two, three and six as recommended by the Subdivision Committee.

Based on your request for desiring to appeal the requirement of a 35-foot setback from Hillside, this is to advise you that we will forward the plat to the Board of City Commissioners for consideration at their regular meeting on March 23, 1971.

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

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber

Page 2 - Mr. William P. Higgins
March 12, 1971

cc: Alfred A. Caro, 2604 East Central 67214
Baughman Company, 2522 East Kellogg 67211
Ray Bruggeman, Director of Public Works
Dick Linn, Design Chief Engineer

February 25, 1971

Mr. William P. Higgins
Attorney at Law
313 First National Bank Bldg.
Wichita, Kansas 67202

Subject: S/D 70-72 - Final Plat
of ALCON 2ND ADDITION

Dear Mr. Higgins:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission on February 18, 1971, the above captioned plat was reconsidered. The action of the Committee was to reapprove the plat as previously recommended, subject to the conditions in our letter to Baughman Company dated January 8, 1971, except for that portion of condition number 4 (relative to a 35 foot building setback from the new right-of-way line for Hillside. The Committee indicated their recommendation and conditions were to be forwarded on to the Planning Commission with the additional comment that it was a split vote as to whether a 35 or 20 foot setback should be required from Hillside.)

This matter will be forwarded to the Planning Commission for its consideration on Thursday, March 11, 1971, at 1:30 p.m. If you should have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Principal Planner

JDG:rme

cc: Alfred A. Caro, 2604 East Centzal, 67214
Baughman Company, 2522 East Kellogg, 67211

WICHITA-SEDGWICK COUNTY

DATE
February 18, 1971

METROPOLITAN AREA PLANNING DEPARTMENT

TO Subdivision Committee of the Metropolitan
Area Planning Commission

FROM John D. Gist Principal Planner

SUBJECT S/D 70-72 - Final Plat of ALCON SECOND ADDITION
(Front building setbacks from Hillside Avenue
between English and Kellogg)

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission on February 4, 1971, the above-captioned plat was reconsidered. The issues or questions previously raised relative to the granting of a minor street privilege, guarantee of the sidewalk on Hillside and of the setback from Waterman, were all mutually resolved and do not effect or change the conditions of approval as recommended by the Committee on January 7, 1971. The Committee discussed at some length the applicant's request that he be permitted to have a 20 foot front building setback from Hillside, in lieu of the staff's recommendation that this setback be 35 feet. It was the action of the Committee to defer this matter for two weeks so that the applicant could submit his proposed plot plan for developing the property, and so that the Planning staff could report on the reasons for the 35 foot setbacks normally being recommended on Light Commercial from major streets, and as to what is a desirable and recommended setback policy that can be applied for both sides of Hillside between English and Kellogg.

An appropriate beginning is to setforth a definition of a building setback line, which is as follows:

"A line within a lot or other parcel of land in front of which the erection of an enclosed structure or portion thereof is prohibited. Zoning ordinances commonly require different setbacks from the front, rear and side of the lot."

Planned development standards, which include building setbacks, are intended to provide guidance for both private citizens and developers of land as well as public officials involved in community development. Such standards as building setback lines affect the location of a building or buildings on the site, and

COPY

arise from what is considered to be a recommended and desirable standard, not minimum requirement. These setbacks being established on plats in the past, for the most part are not currently required by ordinance or Subdivision Regulations, but have been used and followed for ultimate development of the land. It is recognized that different land uses have different location, site and access requirements.

When adequate land use standards are used, development will be economical, safe, attractive and durable from the standpoint of developer, owner and government. The best development is not necessarily the most economical or the safest alone. Rather, the combination of the various factors must be considered and a judgement made on that basis.

At the Committee meeting on February 4, 1971, the recorded plat of SS&E Addition at the northend of subject block, or more specifically at the southeast corner of English and Hillside, was referred to as only being required a 20 foot building setback from the new right-of-way line on Hillside. It was pointed out that it was a 20 foot building setback that was recommended and established on that plat, and it had been geared to the land being zoned the "BB" Office District. When considering standards for individual lot development, it has been the practice to treat offices separate from commercial development. Offices have different needs for lot and building space and usually generate less and a different type of traffic than do commercial establishments.

The Planning staff's recommendations have been based on the Development Standards Lot-Parcel report and we would venture to say that because of the consistency with which these recommendations have been followed in actions of both the Subdivision Committee and the Metropolitan Area Planning Commission, that the staff is correct in advising developers that the policy of the Planning Commission is to generally require a 35 foot front building setback on light commercial and commercial tracts from major arterials. The objective of this recommended standard has been to protect investment in commercial establishments, and to improve Wichita's economic base for protecting adjacent land uses from any adverse affects of commercial activity, and to encourage commercial establishments that are attractive and economically stable by assuring open space and by minimizing traffic congestion.

We would point out that this recommended setback is not set forth in zoning ordinances or in the Subdivision Regulations and therefore is not inflexible. The Committee has exercised discretion and used judgement in certain instances where specific circumstances and/or proposed plot plans and building plans warranted waiver or deviation

from this policy. We would add that the 35 foot setbacks have been geared to provide openness to development from the adjacent streets, and to establish a distance between the property line and the building line adequate enough to provide at least enough space for one row of parking and its associated circulation aisle.

It is still the staff's recommendation that 35 foot front building setbacks be established from major streets on light commercial and commercially zoned tracts, and at times from the side local or collector streets where warranted on corner lots. We would add that in the current development of a new zoning ordinance for the City of Wichita that the Committees involved and the Planning and City Commissions can then have the opportunity to establish like and comparable setbacks which are deemed appropriate in this new ordinance.

The Committee's request for what could be considered as a desirable recommended setback policy to be applied for both sides of Hillside Avenue between English and Kellogg, was geared on the assumption that there is a trend occurring for the conversion of residential properties to light commercial uses in this area because of the recent actions of the Board of City Commissioners on request for changes of zoning in this immediate area. In answer to this question we feel that our recommendation for 35 foot setbacks are just as applicable even though this is for only a two block stretch between English and Kellogg. We would point out that in conversion of this area from residential to light commercial uses which are for only a half block in depth, that the off-street parking will generally occur in front of the buildings, and perhaps should be encouraged to do so because of the residences which will remain to the rear of the commercial structures, and for this reason most developers will probably desire that their buildings setback at least 35 feet.

We would summarize that 35 feet has been determined to be a desirable setback for protection of adjacent properties and to encourage off-street parking to occur in front of commercial development and the location of structures on the site so as to maintain openness and non congestion of our streets. Again, this setback is a recommended setback not set forth in the zoning ordinance or Subdivision Regulations, and in the past, the Committee can use their discretion in determining cases on their own merits if existing circumstances justifies variation or deviation from a setback policy of 35 feet.

JDG:rme

February 18, 1971

Subdivision Committee of the Metropolitan
Area Planning Commission

John D. Gist Principal Planner

S/D 70-72 - Final Plat of ALCON SECOND ADDITION
(Front building setbacks from Hillside Avenue
between English and Kellogg)

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission on February 4, 1971, the above-captioned plat was reconsidered. The issues or questions previously raised relative to the granting of a minor street privilege, guarantee of the sidewalk on Hillside and of the setback from Waterman, were all mutually resolved and do not effect or change the conditions of approval as recommended by the Committee on January 7, 1971. The Committee discussed at some length the applicant's request that he be permitted to have a 20 foot front building setback from Hillside, in lieu of the staff's recommendation that this setback be 35 feet. It was the action of the Committee to defer this matter for two weeks so that the applicant could submit his proposed plot plan for developing the property, and so that the Planning staff could report on the reasons for the 35 foot setbacks normally being recommended on Light Commercial from major streets, and as to what is a desirable and recommended setback policy that can be applied for both sides of Hillside between English and Kellogg.

An appropriate beginning is to setforth a definition of a building setback line, which is as follows:

"A line within a lot or other parcel of land in front of which the erection of an enclosed structure or portion thereof is prohibited. Zoning ordinances commonly require different setbacks from the front, rear and side of the lot."

Planned development standards, which include building setbacks, are intended to provide guidance for both private citizens and developers of land as well as public officials involved in community development. Such standards as building setback lines affect the location of a building or buildings on the site, and

arise from what is considered to be a recommended and desirable standard, not minimum requirement. These setbacks being established on plats in the past, for the most part are not currently required by ordinance or Subdivision Regulations, but have been used and followed for ultimate development of the land. It is recognized that different land uses have different location, site and access requirements.

When adequate land use standards are used, development will be economical, safe, attractive and durable from the standpoint of developer, owner and government. The best development is not necessarily the most economical or the safest alone. Rather, the combination of the various factors must be considered and a judgement made on that basis.

At the Committee meeting on February 4, 1971, the recorded plat of S&E Addition at the northend of subject block, or more specifically at the southeast corner of English and Hillside, was referred to as only being required a 20 foot building setback from the new right-of-way line on Hillside. It was pointed out that it was a 20 foot building setback that was recommended and established on that plat, and it had been geared to the land being zoned the "BB" Office District. When considering standards for individual lot development, it has been the practice to treat offices separate from commercial development. Offices have different needs for lot and building space and usually generate less and a different type of traffic than do commercial establishments.

The Planning staff's recommendations have been based on the Development Standards Lot-Parcel report and we would venture to say that because of the consistency with which these recommendations have been followed in actions of both the Subdivision Committee and the Metropolitan Area Planning Commission, that the staff is correct in advising developers that the policy of the Planning Commission is to generally require a 35 foot front building setback on light commercial and commercial tracts from major arterials. The objective of this recommended standard has been to protect investment in commercial establishments, and to improve Wichita's economic base for protecting adjacent land uses from any adverse affects of commercial activity, and to encourage commercial establishments that are attractive and economically stable by assuring open space and by minimizing traffic congestion.

We would point out that this recommended setback is not set forth in zoning ordinances or in the Subdivision Regulations and therefore is not inflexible. The Committee has exercised discretion and used judgement in certain instances where specific circumstances and/or proposed plot plans and building plans warranted waiver or deviation

from this policy. We would add that the 35 foot setbacks have been geared to provide openness to development from the adjacent streets, and to establish a distance between the property line and the building line adequate enough to provide at least enough space for one row of parking and its associated circulation aisle.

It is still the staff's recommendation that 35 foot front building setbacks be established from major streets on light commercial and commercially zoned tracts, and at times from the side local or collector streets where warranted on corner lots. We would add that in the current development of a new zoning ordinance for the City of Wichita that the Committees involved and the Planning and City Commissions can then have the opportunity to establish like and comparable setbacks which are deemed appropriate in this new ordinance.

The Committee's request for what could be considered as a desirable recommended setback policy to be applied for both sides of Hillside Avenue between English and Kellogg, was geared on the assumption that there is a trend occurring for the conversion of residential properties to light commercial uses in this area because of the recent actions of the Board of City Commissioners on request for changes of zoning in this immediate area. In answer to this question we feel that our recommendation for 35 foot setbacks are just as applicable even though this is for only a two block stretch between English and Kellogg. We would point out that in conversion of this area from residential to light commercial uses which are for only a half block in depth, that the off-street parking will generally occur in front of the buildings, and perhaps should be encouraged to do so because of the residences which will remain to the rear of the commercial structures, and for this reason most developers will probably desire that their buildings setback at least 35 feet.

We would summarize that 35 feet has been determined to be a desirable setback for protection of adjacent properties and to encourage off-street parking to occur in front of commercial development and the location of structures on the site so as to maintain openness and non congestion of our streets. Again, this setback is a recommended setback not set forth in the zoning ordinance or Subdivision Regulations, and in the past, the Committee can use their discretion in determining cases on their own merits if existing circumstances justifies variation or deviation from a setback policy of 35 feet.

JDG:rme

February 5, 1971

Mr. William P. Higgins
Attorney at Law
313 First National Bank Building
Wichita, Kansas 67202

Subject: S/D 70-72 - Final Plat
of ALCON 2ND ADDITION

Dear Mr. Higgins:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission on February 4, 1971, the above captioned plat was reconsidered. The issues or questions previously raised relative to the granting of a minor street privilege, guarantee of the sidewalk on Hillside and of the setback from Waterman, were all mutually resolved and do not affect or change the conditions of approval as recommended by the Committee on January 7, 1971, set out in my letter to Baughman Company dated January 8.

The Committee discussed at some length the applicant's request that he be permitted to have a 20-foot front building setback from Hillside, in lieu of the staff's recommendation that this setback be 35 feet. It was the action of the Committee to defer this matter for two weeks so that the applicant could submit his proposed plot plan for developing the property, and so that the Planning Staff could report on the reasons for the 35 foot setbacks normally being recommended on Light Commercial from major streets, and as to what is a desirable and recommended setback policy that can be applied for both sides of Hillside between English and Kellogg.

Page 2
February 5, 1971

This plat will be rescheduled before the Committee at their next regular meeting on February 18, 1971.

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

Very truly yours,

John D. Gist
Principal Planner

JDG:rme

cc: Alfred A. Caro, 2604 East Central, 67214
Baughman Company, 2522 East Kellogg, 67211

January 25, 1971

Mr. William P. Higgins
313 First National Bank Building
Wichita, Kansas 67202

Subject: S/D 70-72 - Final plat of
ALCON 2ND ADDITION

Dear Mr. Higgins:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission on January 21, 1971, the above captioned plat was considered.

At your request, the action of the Committee was to defer this plat until their next regular meeting of February 4, 1971. If you have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Senior Planner

JDG:ls

cc Alfred A. Caro, 2604 East Central 67214
Baughman Company, 2522 East Kellogg 67211
Ray Bruggeman, Director of Public Works
Dick Linn, Design Chief Engineer

January 15, 1971

Mr. William P. Higgins
Attorney
First National Bank Building
Wichita, Kansas 67202

Re: S/D 70-72 - Final plat of
ALCON 2ND ADDITION

Dear Mr. Higgins:

At the regular meeting of the Planning Commission on January 14, 1971, the above-captioned plat was considered. Since this plat had been recommended for approval subject to certain conditions which were agreed to by John Brimer at the Subdivision Committee meeting, and since you raised certain questions regarding setbacks from both streets and the utilization of the required 20-foot dedication for Hillside for a minor street privilege, the action of the Planning Commission was to refer this plat back to the Subdivision Committee so that you could attempt to resolve these questions at that level.

The Planning Commission has no authority to grant minor street privileges. Your contact should be with the Department of Public Works as to whether or not a minor street privilege permit can be obtained for this 20-foot dedication. It is my understanding that any required off-street parking cannot be placed in such area nor can permanent structures such as buildings or gasoline pumps.

Since you apparently have a proposed site development plan, please furnish us a copy at your earliest convenience so that we can be prepared to comment at the Subdivision Committee meeting. This matter will be placed on the agenda for that Committee for their regular meeting on January 21, 1971, at 2:00 p.m. in Room 401 City Building Annex.

Page 2 - Mr. William P. Higgins
January 15, 1971

If you have any questions, please call.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber

cc: Alfred A. Caro, 2604 East Central 67214
Baughman Company, 2522 East Kellogg 67211
Ray Bruggeman, Director of Public Works
Dick Linn, Design Chief Engineer

January 8, 1971

Baughman Company
2522 East Kellogg
Wichita, Kansas 67211

Subject: S/D 70-72 - Final Plat
of ALCON 2ND ADDITION

Gentlemen;

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, January 7, 1971, the above captioned plat was considered. The action of the Committee was to recommend that this plat be approved, subject to:

1. There appears to be an error in the distance indicated for the legal tie. This should be checked by the applicant's surveyor and the necessary corrections made.
2. The texts for approval and acceptance by the City and County Commissioners shall be changed to read as follows: "This plat approved and the dedications shown hereon, accepted by the Board..."
3. The 15-foot setback indicated from the north line of Waterman shall be increased to 20 feet.
4. Twenty (20) feet of additional right-of-way shall be indicated for Hillside, both on the face of the plat and with the appropriate accompanying language in the plat's text. The 35-foot building setback from Hillside shall then be adjusted from the new right-of-way line accordingly.
5. The applicant shall guarantee the reconstruction of a sidewalk on Hillside Avenue adjacent to the new right-of-way line.
6. Recording of the plat within 30 days after approval by the Board of City Commissioners.

Page 2
January 8, 1971

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, January 14, 1971, at 1:30 p.m. If you should have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Senior Planner

JDG:rme

Enclosure

cc: Alfred A. Caro, 2604 East Central, 67214
John W. Brimer, Attorney, 1st National Bank Bldg., 67202

Final Plat
SUBDIVISION REPORT

SUBDIVISION COMMITTEE
METROPOLITAN AREA
PLANNING COMMISSION

S/D NO. 70-72 Name ALCON 2ND ADDITION
Date Application Rec'd. 12-28-70 Preliminary Approval N/A
Scheduled S/D Meeting 1-7-71

DESCRIPTION

General Location At the northeast corner of Hillside and Waterman

Owner Alfred A. Caro
Surveyor/Engineer Baughman Company Phone 683-7431
Address 2522 East Kellogg 67211

1. Gross Acreage of Plat 0.65
2. Number of Lots:
 - Residential _____
 - Commercial 1
 - Industrial _____
 - Other _____
3. Minimum Lot Frontage 201.74 ft.
4. Minimum Lot Area 28,200 sq. ft.
5. Existing Zoning "A"
6. Proposed Zoning "LC"
7. Lineal Feet of New Streets:
 - a. _____ R/W _____ ft.
 - b. _____ R/W _____ ft.
 - c. _____ R/W _____ ft.
 - d. _____ R/W _____ ft.
 - e. _____ R/W _____ ft.
 - TOTAL _____ ft.
8. Sidewalk adjacent to all streets? x yes no
9. Public Water Supply yes (Yes-No), Name City of Wichita
10. Public Sanitary Sewers yes (Yes-No), Name " "
11. Health Department Approval (where applicable) _____ (Yes-No)
12. City of Wichita X : Three-Mile Area _____

STAFF COMMENTS:

1. The associated zone case Z-1220 "A" to "LC", has been approved by the Board of City Commissioners subject to replatting.
2. There appears to be an error in the distance indicated for the legal tie. This should be checked by the applicant's surveyor and the necessary corrections made.
3. The texts for approval and acceptance by the City and County Commissioners shall be changed to read as follows: "This plat approved and the dedications shown hereon, accepted by the Board..."
4. It is recommended that the 15 foot setback indicated from the north line of Waterman be increased to 20 feet.
5. Hillside is a major street and provides for only 30 feet of half-street right-of-way whereas 50 feet is required. Therefore, 20 feet of additional right-of-way shall be indicated for Hillside, both on the face of the plat and with the appropriate accompanying language in the plat's text. The 35 foot building setback from Hillside shall then be adjusted from the new right-of-way line accordingly.
6. The applicant shall guarantee the reconstruction of a sidewalk on Hillside Avenue adjacent to the new right-of-way line.
7. Recording 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.: 5747
Section No.: 23
Twp. No.: 27S
Range: 1E

S/D No. 70-72

APPLICATION FOR SUBDIVISION APPROVAL

Name of Subdivision: Alcon 2nd. Addition

General Location: N.E. Cor. Waterman & Hillside

Name of Property Owner: Alfred A. Caro Phone: MU 32664

Address: 2604 E. Central

Name of Subdivider: _____ Phone: _____

Address: _____

Name of Agent/Surveyor: Baughman Co. Phone: 683-7431

Address: _____

Date of Application: 12-16-70

SUBDIVISION INFORMATION:

1. Gross Acreage of Plat 0.65
2. Number of Lots:
Residential _____
Commercial 1
Industrial _____
Other _____
Total Number of Lots 1
3. Minimum Lot Frontage 201.74 ft.
4. Minimum Lot Area 28,200 ft.
5. Existing Zoning Ma
6. Proposed Zoning LC

7. Lineal Feet of New Streets:
a. _____ R/W _____ ft.
b. _____ R/W _____ ft.
c. _____ R/W _____ ft.
d. _____ R/W _____ ft.
e. _____ R/W _____ ft.
TOTAL _____ ft.
8. Sidewalk adjacent to all streets? yes no

9. Public Water Supply Yes (Yes-No), Name _____ City _____
10. Public Sanitary Sewers Y (Yes-No), Name _____
11. Health Department Approval (where applicable) _____ (Yes-No)
12. City of Wichita X 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: Alfred A. Caro

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

Received by Neerby (L)
Date 12-28-70
Fee Submitted 250.00

T9-301B (10-68)



Form 224.021

PAYMENT NOTICE

City of Wichita

AT TREASURER'S OFFICE - FIRST FLOOR

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

DESCRIPTION	AMOUNT
Plat - Alms	150 ⁰⁰

Name 2nd Addition

Address Alfred A. Caro

Type 2604 E. Central

Comments: R-71-C Due Date

Date 12-28-70 By lw