

(150004) Published in The Derby Reporter on July 1, 2004  
RESOLUTION NO. 106-04

A RESOLUTION CHANGING THE ZONING CLASSIFICATION FOR CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C AS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, DECEMBER 12, 1984 AND SUBSEQUENTLY AMENDED.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS

**SECTION I.** That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-C of the Wichita Sedgwick County Unified Zoning Code, the zoning classification or district of the lands legally described hereby are changed as follows:

**Case No. ZON2004-00017**

Protective Overlay to prohibit sexually oriented business on property zoned "GC" General Commercial, on property described as:

Beginning 150 feet East of the Northwest corner of Lot 2; thence S 170 feet; thence East 75 feet; thence North 170 feet; thence West 75 feet to beginning, Block A, S.J. Properties 2nd Addition to Sedgwick County, Kansas.

AND

Lot 2 except the North 150 feet of the West 150 feet thereof and except the East 75 feet of the West 225 feet of the North 170 feet thereof, Block A, S.J. Properties 2nd Addition to Sedgwick County, Kansas. Generally located south of 47<sup>th</sup> Street South and east of Clifton.

**SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY #139:**

1. No adult entertainment establishment or sexually oriented business shall be operated on the subject property.

**SECTION II.** That upon the taking effect of this Resolution, the notation of such zone change shall be entered in the official zoning atlas on file in the Office of the County Zoning Administrator and in the Office of the Wichita-Sedgwick County Metropolitan Area Planning Department.

**SECTION III.** That this Resolution shall take effect and be in force from and after its adoption and publication.

Commissioners present and voting were:

DAVE UNRUH	<u>aye</u>
TIM R. NORTON	<u>aye</u>
THOMAS G. WINTERS	<u>aye</u>
CAROLYN McGINN	<u>aye</u>
BEN SCIORTINO	<u>aye</u>

DATED this 23<sup>rd</sup> day of June

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

Thomas G. Winters  
THOMAS G. WINTERS, CHAIRMAN  
Third District

ATTEST:

Don Brace  
DON BRACE, County Clerk

APPROVED AS TO FORM:

Robert W. Parnacott  
ROBERT W. PARNACOTT,  
Assistant County Counselor



## STAFF REPORT

MAPC May 6, 2004

CASE NUMBER: ZON2004-00017

APPLICANT/AGENT: Consolidated Property Developments, Inc, c/o James Trotter

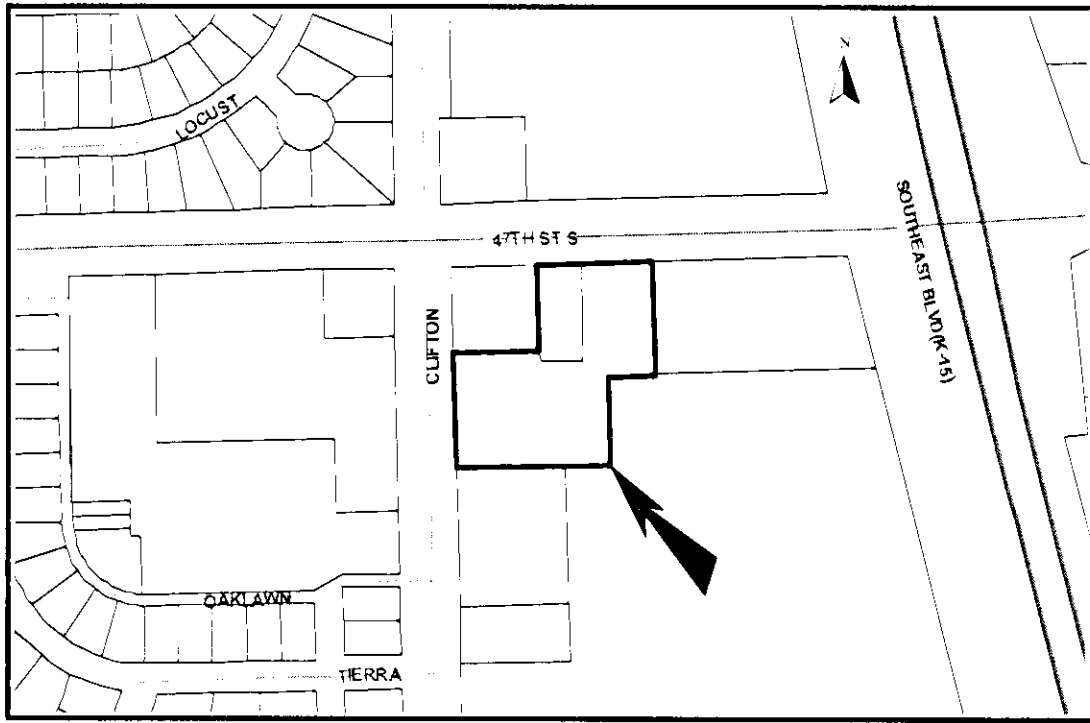
REQUEST: Protective Overlay to prohibit sexually oriented business

CURRENT ZONING: "GC" General Commercial

SITE SIZE: 2.01 acres

LOCATION: South of 47<sup>th</sup> Street south and east of Clifton

PROPOSED USE: Commercial use except sexually-oriented business



**BACKGROUND:** The applicant is requesting to prohibit sexually oriented business as defined by the Unified Zoning Code on a property located at the southeast corner of 47<sup>th</sup> Street South and Clifton. This property is located in the business district of the Oaklawn community.

No specific plans are known for the site. It has been used in the past for an adult entertainment establishment. The Oaklawn community has sought to limit the number of adult businesses in the community. In response, the county added sexually oriented business licensing and zoning restrictions to prohibit adult entertainment establishments within 1,000 feet of schools, churches, parks, residential dwellings or other adult establishment to the Unified Zoning Code in 2001. Existing establishments not in compliance with the new distance requirements could continue operating until June 30, 2004. This establishment would not have been in compliance with the new codes.

In addition to the requested protective overlay, the owner has executed a restrictive covenant to prohibit any adult entertainment establishment or sexually oriented business from operating on the site. The covenant benefits the property, the Oaklawn Improvement District and the public. It benefits successors and assigns and runs with the land until April 1, 2024, is automatically renewable for ten-year periods, and requires written consent from the Board of County Commissioners of Sedgwick County for termination or modification.

Two other adult entertainment establishments had been located in the vicinity, but both are being closed. One was directly west of the corner and the other was south of the applicant's property.

A trucking business is operating on the balance of the property owned by the applicant. A convenience store under separate ownership is in operation at the corner. A small shopping center is located directly across Clifton on property zoned "LC". A residential subdivision zoned "SF-5" is located to the northwest of the intersection. An auto repair business zoned "LC" and a new senior center and day care center are located to the north. An elementary school is located to the south on property zoned "LC" and "LI" Limited Industrial.

**CASE HISTORY:** The property is platted as S-J Properties Second Addition.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LC";	Vehicle repair, limited, daycare and senior center
SOUTH:	"GC"; "LC"; "LI"	Vacant bar, school
EAST:	"GC"	Vacant
WEST:	"LC"; "SF-5"	Shopping center, single-family residential

**PUBLIC SERVICES:** The property is located on the 47<sup>th</sup> Street South and Clifton Avenue. 47<sup>th</sup> is a principal arterial and Clifton is a collector.

Other normal public services are available.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" of the 1999 *Update to the Wichita/Sedgwick County Comprehensive Plan*, amended in January 2002, identifies the property as appropriate for "commercial" use.

**RECOMMENDATION:** The protective overlay prohibits sexually oriented business on a tract that is near residences and an elementary school. This is in conformance with the intent of the Unified Zoning Code amendment in 2001 to eliminate sexually oriented businesses within 1,000 feet of schools, residences, parks and churches.

Based on this information and the information available prior to the public hearing, staff recommends the request be APPROVED for the following protective overlay:

No adult entertainment establishment or sexually oriented business shall be operated on the subject property.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: A trucking business is operating on the balance of the property owned by the applicant. A convenience store under separate ownership is in operation at the corner. A small shopping center is located directly across Clifton on property zoned "LC". A residential subdivision zoned "SF-5" is located to the northwest of the intersection. An auto repair business zoned "LC" and a new senior center and day care center are located to the north. An elementary school is located to the south on property zoned "LC" and "LI" Limited Industrial. Two other adult entertainment establishments had been located in the vicinity, but both are being closed. One was directly west of the corner and the other was south of the applicant's property.
2. The suitability of the subject property for the uses to which it has been restricted: The property is suitable for "GC" General Commercial use and many other "GC" uses are allowed on the property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed protective overlay will not have detrimental effects.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The existing zoning is in conformance to the Comprehensive Plan and the protective overlay is in conformance to the policies of the Unified Zoning Code.
5. Impact of the proposed development on community facilities: None.