

EXCERPT FROM PLANNING COMMISSION MEETING OF 2/08/01

ZON2001-00002 - L&D Real Estate (Owner); Dan Claassen (Agent/Lessee/option to purchase) request zone change from "RR" Rural Residential to "GC" General Commercial; and

CON2001-00002 -L&D Real Estate (Owner); Dan Claassen (Agent/Lessee/Option to purchase) request a Conditional Use for agricultural sales and service on property described as:

That part of the SE 1/4 of Sec. 11, Twp. 26S, R2E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the S.E. Corner of said SE 1/4; thence with an assumed bearing of N 01 degrees 07' 48" W, along the east line of said SE 1/4, 495.14 feet; thence S 88 degrees 52'12"W, 30 feet to a point on the west line of 143rd Street East as established by Condemnation Case No. 95C-1132 for a place of beginning; thence S 18 degrees 09' 36"W, along said right-of-way, 105.95 feet; thence S 01 degrees 07'48"E, 280 feet to the north line of State Highway 254 as established by Condemnation Case No. 95C-1132; thence S 78 degrees 46'04"W, along said right-of-way, 138.30 feet; thence S 89 degrees 07' 11"W, along said right-of-way, 410 feet; thence N 70 degrees 24'29"W, along said right-of-way, 132.41 feet; thence N 01 degrees 07'48" W, 355.62 feet; thence N 88 degrees 52'12"E, 705 feet to the place of beginning. Generally located on the northwest corner of 143rd Street East and Highway 254.

DALE MILLER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is leasing with option to buy 6.14 acres located at the northwest corner of 143rd Street North and Highway 254. The site was originally developed as a gasoline service station prior to adoption of countywide zoning. With the adoption of countywide zoning in 1985, the site was zoned "RR" Rural Residential and remains so zoned today. After countywide zoning went into effect, the service station was identified as a legal non-conforming use in the "RR" Rural Residential district. The applicant is owner of the "Fuel Outlet", a discount gasoline sales concern. The applicant fabricates the support structures and canopies utilized at each of the Fuel Outlet sites. The fabrication activities (cutting and welding of metal components) have been determined by the County Zoning Administrator to be "limited manufacturing" activities requiring "GC" General Commercial zoning. The applicant is seeking "GC" General

Commercial in order to conduct "limited manufacturing" activities on this location.

According to the "Unified Zoning Code", limited manufacturing is defined as an establishment engaged in the onsite production of goods by hand manufacturing which generally involves only the use of hand tools or other equipment not exceeding two horsepower.

The closest residence is approximately 1200 feet to the northwest. Another residence is located to the north approximately 1400 feet away. All of the surrounding property is zoned "RR" Rural Residential and is either used for large lot residential or agricultural uses.

CASE HISTORY: The site has legal non-conforming status for a gasoline service station.

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Rural Residential; large lot residential, agriculture

SOUTH: "RR" Rural Residential; agriculture

EAST: "RR" Rural Residential; agricultural and large-lot residential

WEST: "RR" Rural Residential; agricultural and large-lot residential

PUBLIC SERVICES: Municipal sewer and water services are not available. The site is currently served by on-site services. The Health Department will have to approve the continued use of on-site services at the time of platting.

CONFORMANCE TO PLANS/POLICIES: The "Comprehensive Plan" depicts this site as "rural". Rural areas consist of land outside the 30 year Wichita urban service boundary and small city growth areas. This category of use is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services. Strategy III.B4 states that in those portions of rural unincorporated Sedgwick County located outside the projected urban growth area, commercial development should be limited to those activities that are agriculturally oriented or provide necessary convenience services to residents in the immediate area, or provide highway-oriented services at interchange areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED. This recommendation of denial is based upon fact that the intended use is not consistent with Comprehensive Plan policy and strategy listed above. The

requested use is not agriculturally oriented and it does not provide necessary convenience services to residents in the immediate area. The use provides support services for the applicant's "Fuel Outlet" business that has no relationship to agricultural operations, site-based resources, and highway users or for the convenience of nearby residents. According to Comprehensive Plan recommendations, this use should be located in an area that is urbanized or where urban services (municipal water with hydrants, close by fire stations, municipal sewer with monitoring of waste disposal, paved roads, etc.) are scheduled to be extended.

However if the Planning Commission feels the request is appropriate, the application should be subject to the following Protective Overlay conditions:

- A. The uses permitted on this site shall be restricted to those permitted by the "RR" Rural Residential zoning district plus "limited manufacturing" uses as defined in the Unified Zoning Code.
- B. The area covered by the "GC" General Commercial zoning shall be limited to area shown on the attached site plan.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. Surrounding land is zoned "RR" Rural Residential and is used for large lot residential uses or agricultural pursuits. This area is rural in character.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "RR" Rural Residential which restricts the site to low intensity uses. Only two commercial and industrial uses are permitted by right in the "RR" district, those being a hobby kennel and an asphalt plant, limited. The site also has a legal nonconforming right to a gasoline service station. Given the lack of public services and its distance from any other urban uses or urban population density, the subject property is suitably restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Granting of "GC" General Commercial zoning will set a precedence for this type of zoning at this rural location. The "GC" district permits a wide variety of intense commercial and industrial uses that would not be appropriate at this location.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The intended use is not consistent with

Comprehensive Plan policy and strategy guidelines as state above. The requested use is not agriculturally oriented and it does not provide necessary convenience services to rural residents in the immediate area. The use provides support services for the applicant's "Fuel Outlet" business that has no relationship to agricultural operations, site-based resources, and highway travel or for the convenience of nearby residents. According to Comprehensive Plan recommendations, this use should be located inside one of the cities within the county.

5. Impact of the proposed development on community facilities: None identified.

MILLER "Commissioners, there are two items here. They are applications for the same piece of property by the same applicant; however, they are different and there is a reason why they are being handled as two separate items as opposed to companion items like you normally see with a zone change and a Conditional Use. The reason for that is that the Conditional Use really has nothing to do with the request for the 'GC' Commercial.

Let me try to clarify that. On 6a, it is the request for the 'GC' General Commercial zoning; and what we have here is out on Highway K-254, just west of 143rd Street at the northwest corner of 143rd and K-254, is an old gas station that has been there for a number of years. It is currently considered to be a legal non-conforming use with respect to gasoline sales. The service station was there, went out of business and the County Zoning Administrator has determined that in his opinion, they still have the rights to open a gasoline sales/service station as a non-conforming use because it is still zoned 'RR' Rural Residential. However, what the applicant's intended use for it is he is the owner and operator of the fuel outlets that you have seen around town where they sell discount gasoline. He uses this location, or intends to use this location for his offices. He also fabricates the awnings and the support structures for the fuel outlet facilities, if you have seen those. There is a canopy and a support structure that hold that canopy over the pump stations.

It is my understanding, and he will be able to explain this in more detail, but they take metal components, weld and fabricate those at this location. In the opinion of the Zoning Administrator, that requires 'GC' General Commercial because that is limited manufacturing. So he is asking for the 'GC' zoning in order to do his manufacturing for the fuel outlet facilities at this location.

To the northwest is the closest residence, it is about 1200 feet. To the east is Leffler Trailer Sales, half a mile to the east, give or take. The Comprehensive Plan depicts this site as being rural and the rural area consists of land outside the 30-year Wichita Urban Service boundary and any of the small city growth areas. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large-lot residential subdivisions. There is also a strategy in the Comprehensive Plan, Strategy 3-B IV, which states that in these portions of rural unincorporated Sedgwick County that are located outside the projected urban growth area, commercial development should be limited to those activities that are agriculturally oriented, or provide necessary convenience services to residents in the immediate area, or that provide highway oriented services at interchange areas.

Because of that, those policies and that strategy, staff is not recommending approval for this particular request for 'GC' General Commercial at this location. We don't feel that introducing 'GC' zoning in Limited Manufacturing in an area that is clearly a rural area at this point in time to be consistent with the plans policies or the strategies listed in support of those policies. However, if the Planning Commission disagrees with staff's recommendation, we are recommending that the 'GC' zoning, if you should decide to approve it, to be approved subject to a Protective Overlay that contains 2 conditions.

1. That the site is restricted to those uses permitted in the 'RR' district as well as Limited Manufacturing only.
2. That the area covered by the 'GC' General Commercial zoning be limited to the area shown on the site plan.

On the last page of the staff report there is a site plan attached that shows the existing office shop and the canopy that is there today that used to be where the gas pumps were when it was a gas station.

I guess I will ask for some guidance at this point, whether you want to take these separately or whether you want to hear the second request and then talk about them separately. It probably makes the most sense to do that, in my mind, to let me go ahead and do the second request."

MICHAELIS "I would agree with that."

MILLER "All right, this next request is the same piece of property, same acreage, etc., however, the reason for this particular request is that the

applicant is also wanting to sell propane fuel at this location. As you noticed on that one slide there was a rather large propane tank that is out in front of the facility today. The applicant has a contract currently in place to sell the propane. The reason for the two requests is that if, for some reason, he doesn't get the 'GC' approved, he needs this Conditional Use for ag sales and service in order to continue the propane sales because the County Zoning Administrator has determined that this type of sales activity is more intensive than what would have been permitted by just the gasoline sales that it currently is permitted as a non-conforming use. So he is asking for a Conditional Use to permit Ag sales and service and propane sales in particular. In the definition of agricultural sales and service, propane sales is specifically listed as a permitted use. So we don't have a problem with interpretation as far as the use and what kind of category it should fall under.

He has bulk sales here (indicating on a slide) and then smaller, residential-sized tanks here that would be available for lease or sale to property owners. There are also delivery trucks so that they can deliver the fuel to the residences. To kind of make a long story short, we feel like this is a true agricultural sales use and should be approved, subject to the conditions listed on Page 3, A,B,C and D. The same site plan is attached to this particular request.

To kind of wrap this up, the reason for the two requests was that if the 'GC' zoning is not approved, then he still needs the Conditional Use for ag sales and service if you think that is an appropriate use there as well. If it turns out that he gets the 'GC' approved, he doesn't necessarily need the Conditional Use, but given the situation that he was in, he needed a 'fail-safe' approach to this. With that, I will try and answer any questions."

JOHNSON "Will you go back to the slide where the large tank was that was in front of that canopy? When this service station was put in here, it was in 'Rural Residential' zoning, so it was non-complying?"

MILLER "The service station would have been there probably before zoning was there, so it wasn't zoned anything until...."

JOHNSON "Okay. When that was done, surely there was some kind of a permit or something taken out for that facility, and for the canopy."

MILLER "Do you mean for the building?"

JOHNSON "Right."

MILLER "Well, I don't know."

JOHNSON "I guess what I am leading up to, it looks like to me that the canopy is awfully close to the right-of-way of K-254. And now, there is a propane tank that is even closer. I didn't know if there was any kind of problems where this tank is sitting if we grant that zoning. Then would this have to be platted and there would be setback requirements and the tank would be in that setback, or what?"

MILLER "I don't know. I am guessing it is somewhere around 20-foot off of the property line, based on the site plan. They are showing a 26-foot distance to the edge of the canopy."

KROUT "They do permit canopies to be an exception to the building setback. I think that if this was proposed for zoning that you are also recommending that it be subject to platting."

MILLER "Correct."

JOHNSON "Well, do you see that tank staying there?"

KROUT "Well, it is 'GC' zoning, and a 'GC' zoning permits outside storage and I think that is basically what you have out there. So yes, it would be, technically. They may have to screen it from view of K-254 to comply with the screening requirements for outside storage, I'm not sure. We will have to look at that. But I think that it would be permitted."

MILLER "I have been advised by County Code Enforcement that all of the appropriate fire officials have reviewed this particular tank in this particular location and they have all signed off on it."

MICHAELIS "Are there any further questions of staff? Thank you, Mr. Miller. At this time, could we hear from the applicant, please?"

DAN CLAASSEN "I am the owner of the facility. If I could just regress and answer the question more specifically--we did meet with KDOT on the setback of the tank. In fact, there is a 10-foot setback requirement off of the property line, but KDOT has no setback requirement whatsoever. In fact, as far as they are concerned, it could be right up against the fence.

Let me give you a little history on this facility. This was owned by a gentleman by the name of Coy Burge many, many years ago. He operated

a restaurant there; had his corporate offices there, had a convenience store there with outside gas sales. Had a bulk gas storage facility there that he operated bulk deliveries on gasoline, and I imagine diesel-- I don't know that for a fact--at that facility, and then he had an area for storage and for light maintenance.

In fact, that is what I really want to do, in like manner. I don't want to have a restaurant there, but do want to have my corporate offices for Fuel Outlet at that facility, where the customers call in and we address their concerns. There is not a lot of drive in or out traffic associated with that. The former restaurant building is used just internally for light storage for office supplies and the like. The former convenience store area is where we do what we call out light assembly area. The products are brought in, it is an air conditioned area, and we do our electronic testing, etc., there. And then in the former maintenance facility is where the shop area is. For the most part, we bring components into that area and we assemble them. In the way of actually doing fabrication, probably a fraction of 1% of our time is actually spent with a welder touching it to a piece of metal.

Everything you see at a Fuel Outlet, if you are familiar with one of those unattended gas stations, we do. We farm out a lot of it. Like the canopy, for example, we don't do that on-site, we farm that out to a fabricator here in town. But we do assemble the dispensers in the facility.

In regards to the propane sales, I would like to announce to you that we have gotten the stamp of approval from the State Fire Marshall of having the highest quality bulk farm for propane in the State of Kansas. So we do bring a little bit of happiness to the table today.

For the most part, I want to continue the tradition of what has been done at that facility in the past. It is somewhat of an anomaly because it was out there and it was operating before there were zoning restrictions and laws associated with that. We have taken this facility that was out of service for some time--it went out of service because it lost access to K-254 highway for drive in traffic. We don't have a direct relationship with the customer where they drive in and buy a product from us and leave, such as a convenience store would. So the access was not an issue for us. But for the most part, I want to continue the tradition of that facility that was taken out of service and really was left in a dilapidated state of repair. We came in and have cleaned it up and fixed it up and are wanting to operate it."

MICHAELIS "Are there any questions of Mr. Claassen?"

GAROFALO "Mr. Claassen, are you telling us that you already have all of this activity going on there?"

CLAASSEN "Yes. There was a major misunderstanding with this facility. It was represented to me as being a legal non-conforming use activity out there. So, in fact, yes, we did move in and start, in a limited form, some of the activity. Then we found out, through Code Enforcement, that it was not as we believed."

GAROFALO "The propane sales...people don't come in for that?"

CLAASSEN "No. We do bulk delivery to residences. They can bring a bottle in for filling, like a 20-pound barbecue grill and we would be happy to service that, but for the most part it is all bulk delivery."

BARFIELD "What kind of inventory do you envision in terms of your awnings?"

CLAASSEN "You will see very little on the outside, for the most part. All of the components of a fuel outlet are the smaller type. We are a big jigsaw puzzle, if you will. When we go out to the construction site, we put all of the pieces together ahead of schedule in the facility, then we take it out and put these components together. So for the most part, it is all stored inside.

What you would see outside, out of fairness, is there are storage trailers that we take out, like on a construction site where you see the job trailer. We bring that in, we fill it up and then we take it out to the site. But we do a very good job of keeping things neat. I don't know if you have ever driven up to a Fuel Outlet, but it is clean when you go there. We take that same mentality and bring it to our facilities out there. We think that we are a very good neighbor. We have cleaned it up, we have taken out all of the trash-- dumpster-load after dumpster-load has been taken to the landfill. I hope that we are a good neighbor."

BARFIELD "But there would be some outside storage there."

CLAASSEN "There would be."

WARREN "As I relate to a Fuel Outlet, of course, the biggest thing you have is that canopy, and you are saying that you don't fabricate there."

CLAASSEN "No, sir."

WARREN "So, when you talk about this dispensary unit, it is a gas pump?"

CLAASSEN "Yep."

WARREN "So it is a little gas pump that you are going to fabricate, assemble and etc."

CLAASSEN "Now, don't belittle it. It is a really important piece of merchandise to me."

(Laughter here)

WARREN "I understand, but it is not like that canopy."

CLAASSEN "Yeah, yeah. That is done on a store that is on South Broadway, by a subcontractor."

WARREN "So most of your work would be in the size of that gas pump?"

CLAASSEN "Yeah, or even smaller. For example, the gas dispensers, by regulation, have a secondary containment box that sits in the concrete under that. We bring that box in, we cut the holes in the side of it, we mount the connectors there and then we dispatch to the side, and then they simply hook the hoses up to that."

OSBORNE-HOWES "I don't know whether I should ask you this or staff, but you have talked to staff, so, if you sell this propane gas to residences, how does this qualify as agricultural sales and service?"

CLAASSEN "It is rural America."

OSBORNE-HOWES "Rural Residential then."

CLAASSEN "Yeah."

GAROFALO "I have one other question. This outside storage, what do you think it would involve? What does it involve, and could you eliminate that by building and putting the stuff inside so you don't have a bunch of junky looking stuff maybe."

CLAASSEN "Don't let me over emphasize what outside storage is. The job trailer that we bring in and fill up. That has to be outside while we are filling

it up and then it is dispatched out. But beyond that, I don't have any need for outside storage whatsoever."

GAROFALO "You won't have a bunch of these old pumps that you have to replace or something? Pumps that go bad or whatever."

CLAASSEN "One dispenser costs \$32,374.00. I will not leave it outside."

GAROFALO "Well, I mean if you had to replace them they wouldn't be laying around rusting away?"

CLAASSEN "No, sir. We would disassemble it and remove it. I wish you could have seen a 'before and after' shot of this. Is anybody familiar with this prior to Fuel Outlet? Okay, what was it like before we got there?"

HENTZEN "I knew Cory Burge, and I can tell you it was not the best looking place."

CLAASSEN "You are too kind. However today it is swept, it is neat, it is mowed and it is trimmed, and it will stay that way."

GAROFALO "Do you anticipate an expansion of this activity?"

CLAASSEN "No, I don't. But I would rather not be restricted to that. I want to grow."

GAROFALO "I guess we can understand that."

MARNELL "I have a question for Dale. Dale, when you were talking about limiting the zoning to the portion that has the shop with a canopy already on there, what portion of that lot that was shown on the tract, what portion is that. "

MILLER "The application area indicates that they have contracted for a little over 6 acres, but if you look at the site plan, that is not 6 acres. So what we were suggesting was that if it is approved that it be restricted to the area covered by the site plan. I haven't calculated what that is, but if you look at the dimensions on there, that is not 6 acres. Approximately 2 acres."

BARFIELD "I have a question for Marvin. Will 'GC' allow for the type of outside storage that he is referring to?"

KROUT "Yes, unless he is specifically prohibited in a Protective Overlay."

WARREN "I take it that an approval of this would probably dictate that we have a plat within a year. So at that time, then, we could restrict that 6 acres that we are talking about."

KROUT "This is the time to decide what the dimensions of the zoning district should be."

WARREN "You say dimensions. I don't have any way of the meets and bounds. We could say 6 acres and I am not sure where it would be. But we could determine that in a plat."

KROUT "Yes, the plat will give you a legal description, but I mean based on the site plan."

WARREN "You would say more or less 6 acres then, to be subject to description in plat?"

KROUT "That is the whole property. The tract that is developed and used now is approximately 2 acres, Dale?"

MILLER "About 3-1/4 acres, he says, total. If you look at the site plan and look at the area that is outlined there, that is not 6 acres. So he has indicated that it is about 3-1/4 acres."

WARREN "But you are of the opinion that this is what he is asking for for 'GC' then, on the site plan?"

MILLER "Yes, unless he indicates that he needs more. But based on the way his operation is today, that more than covers what he is doing out there."

WARREN "Has he indicated to you an agreement to a Protective Overlay that would pretty much restrict him to doing what he is doing now?"

MILLER "We can ask him. He is indicating that he is okay with that."

WARREN "His answer is yes. Okay."

MICHAELIS "Are there any further questions of Mr. Miller? Okay. We need to back up here a little bit and go to the audience. Is there anyone in the audience that wishes to speak in favor of this? Is there anyone who wishes

to speak in opposition to it? Seeing none, we will bring it back to the Commission."

BARFIELD "I'm sorry. I would like to ask the applicant another question. If this were to be approved, are you in agreement with staff's comments?"

CLAASSEN "Yes."

MICHAELIS "Shall we take these one at a time?"

KROUT "Let's take a motion on each one."

MICHAELIS "If we approve 6a, you don't need 6b."

KROUT "Well, potentially, the County Commission....this could go forward and one might drop out."

MICHAELIS "Okay. We are ready for a motion on Item 6a."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood. Surrounding land is zoned "RR" Rural Residential and is used for large lot residential uses or agricultural pursuits. This area is rural in character. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "RR" Rural Residential which restricts the site to low intensity uses. Only two commercial and industrial uses are permitted by right in the "RR" district, those being a hobby kennel and an asphalt plant, limited. The site also has a legal nonconforming right to a gasoline service station. Given the lack of public services and its distance from any other urban uses or urban population density, the subject property is suitably restricted. Extent to which removal of the restrictions will detrimentally affect nearby property: Granting of "GC" General Commercial zoning will set a precedence for this type of zoning at this rural location. The "GC" district permits a wide variety of intense commercial and industrial uses that

would not be appropriate at this location. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The intended use is not consistent with Comprehensive Plan policy and strategy guidelines as state above. The requested use is not agriculturally oriented and it does not provide necessary convenience services to rural residents in the immediate area. The use provides support services for the applicant's "Fuel Outlet" business that has no relationship to agricultural operations, site-based resources, and highway travel or for the convenience of nearby residents. According to Comprehensive Plan recommendations, this use should be located inside one of the cities within the county. Impact of the proposed development on community facilities: None identified.) I move that we recommend to the governing body that the request be approved, subject to the following Protective Overlay conditions:

- A. The uses permitted on this site shall be restricted to those permitted by the "RR" Rural Residential zoning district plus "limited manufacturing" uses as defined in the Unified Zoning Code.
- B. The area covered by the "GC" General Commercial zoning shall be limited to area shown on the attached site plan.

BARFIELD moved, **MARNELL** seconded the motion.

MARNELL "Did the motion include only the portions currently used for the operation, something less than 3-1/2 acres as opposed to the whole site."

BARFIELD "Yes."

KROUT "You need to make findings to justify approval of this. The staff comments are findings to justify a vote for denial because it is not in character with the area and not consistent with the Comprehensive Plan. So I think someone needs to turn to the page where the findings of fact are identified and provide the County Commission with your reasoning for approving this."

WARREN "I would like to speak to that. 'GC' is 'GC' based on this book

(indicating) and this Code, but 'GC' with a Protective Overlay is not 'GC'. So, that, I think, is justification. We are not approving 'GC' unabated. We are not approving 'GC' to go do what you want to do, based on this building, we are approving 'GC' very restrictively. I think we can do that. When we put that Protective Overlay on it, then we have changed the dimensions and the definition of 'GC' altogether."

MARNELL "I would like to add to that that this is an existing facility and it would be a shame to have that abandoned. On the other hand, if this was a better piece of land, I don't think we would be saying that this was the place to go locate something that would go in 'GC' unless it would be the kind of structure that is already there. It would seem to be a tremendous waste to tear it down."

GAROFALO "It is not clear to me, at this point, if we approve the 'GC', what area we are approving. I think it is supposed to be the area covered by the site plan?"

MILLER "It is the area covered by the site plan."

GAROFALO "Okay, but earlier, it was mentioned that it was 3-1/2 acres, but I thought the applicant said 3/4 of an acre."

MILLER "Three and a quarter acres."

MICHAELIS "I suppose if you wanted to put a specific area on it, you could."

GAROFALO "I just wanted to make sure."

KROUT "It is 3-1/2, plus or minus an acre."

GAROFALO "Okay. So we are talking about the site plan."

MILLER "Yes. Just for clarification. What he indicated was 3-1/4 acres, not 3/4 of an acre. That's 3.25."

KROUT "The dimensions don't indicate if there is anything that size."

PLATT "Do we have a motion on the floor to discuss?"

MICHAELIS "Yes."

PLATT "I am going to vote against the motion. I think to put 'GC' zoning in this location is a very, very bad precedent. I also do not like the concept of granting zoning because we like a particular activity and don't like something else. I think we need to begin with saying 'all right, is this an appropriate place for 'GC' zoning or not. If it is not, then I don't think we should try to start bending the rules to make exceptions. I think to end up doing 'GC' zoning only for the site plan might create a real gerrymandered situation where we have a snip of non 'GC' zoning surrounding this area which is not usable for anything.

Here we are going to be faced with someone coming back in a couple of years wanting to change that zoning, saying 'I can't use this land for anything else'. Then we will end up with the whole six acres, I think, very, very soon. This is just not a place for 'GC' zoning, and I won't support it."

HENTZEN "I am going to vote for the motion. I want to say that the adjacent zoning and land use in the report shows 'RR' Rural Residential on all sides. The fact is that there isn't any residences near that place. Just because, through some resolution of the County when we put in the zoning ordinance some years ago, we classified everything out there Rural Residential if it wasn't already there for something else, so that to say 'this is not the place for that kind of an operation, I think is baloney. It is already there, and it is the right place for this kind of operation. I will vote for it."

WARREN "I am also going to support the motion. But I am going to question what Dr. Platt has said, and that is that he is still referring back and condemning a project predicated on the fact that we are going to give it a 'GC' zoning and we are not. We are going to give it a modified 'GC' zoning. Every zoning district in that book almost has got some way to modify it. That is what we are doing here. So we are not giving this thing much, turning it loose for 'GC' as he has indicated."

MICHAELIS "Is there any other discussion? We have a motion on the floor to approve item 6a and restrict the 'GC' zoning to the site plan."

KROUT "Subject to platting and subject to the conditions in the Protective Overlay."

VOTE ON THE MOTION: The motion carried with 9 votes in favor (Hentzen, Warren, Michaelis, Johnson, Marnell, Garofalo, Osborne-Howes, Barfield and Lopez) and 1 in opposition (Platt).

MICHAELLIS "Now we need a motion on 6b."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood. All land surrounding the site is zoned "RR" Rural Residential and used for agricultural or large lot residential uses. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "RR" Rural Residential, but has nonconforming use rights for a gasoline service station. The applicant could operate the site as a gasoline service station as a nonconforming use. The "RR" district restricts uses to agriculture, other very low intensity non-residential uses and large lot residences. Those uses could also be developed here. However, since the site is already developed for gasoline sales, and the "RR" district limits the opportunity for many other nonresidential uses, this site is difficult to reuse. "Agricultural sales and services" is a use that is permitted in the "RR" district with a Conditional Use, and sale of propane is specifically listed in the agricultural sales and services definition. Extent to which removal of the restrictions will detrimentally affect nearby property: Compared to a gasoline service station, the proposed use will not detrimentally affect nearby properties to a greater degree. Conformance of the requested change to the adopted or recognized Comprehensive Plan: Strategy III.B4 states that in those portions of rural unincorporated Sedgwick County located outside the projected urban growth area, commercial development should be limited to those activities that are agriculturally oriented or provide necessary convenience services to residents in the immediate area, or provide highway-oriented services at interchange areas. Propane fuel is a product used primarily by rural residents. Impact of the proposed development on community facilities: None identified.) I move that we

recommend to the governing body that the request be approved, subject to the following:

- A. The site shall be developed, maintained and utilized in general conformance with the approved site plan, and shall apply only to the area depicted on the site plan.
- B. The Health Department must approve the on-site sewage system, and all other applicable permits shall be obtained prior to the commencement of operations.
- C. Permitted uses shall be restricted to those permitted by the base zoning district plus agricultural sales and services as defined in the Unified Zoning Code.
- D. Any violation of these conditions shall render this Conditional Use Permit null and void.

MARNELL moved, **JOHNSON** seconded the motion, and it carried unanimously (10-0).
