

(150004) Published in The Wichita Eagle on \_\_\_\_\_  
RESOLUTION NO. \_\_\_\_\_

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. ZON2010-00020**

Zone change request from SF-20 Single-family Residential ("SF-20") to LI Limited Industrial ("LI"), subject to CON2010-00025 Conditional Use:

That part of the Northwest Quarter, Section 23, Township 28 South, Range 1 West, of the Sixth Principal Meridian, Sedgwick County, Kansas lying southeasterly of the Missouri and Pacific Railroad and north of the Big Ditch Cowskin Floodway as recorded in Condemnation Case A-31849,

TOGETHER WITH,

The south 400 feet of Lot 1, Block 1, Alfred's Superior Tree Service Addition, an addition to Sedgwick County, Kansas; generally located south of 47<sup>th</sup> Street South and one-half mile east of Hoover Road (4631 West 47<sup>th</sup> Street South).

SUBJECT TO THE RESCINDING OF PO #57 PERTAINING TO THE PROPERTY DESCRIBED AS FOLLOWS:

The south 400 feet of Lot 1, Block 1, Alfred's Superior Tree Service Addition, an addition to Sedgwick County, Kansas; generally located south of 47<sup>th</sup> Street South and one-half mile east of Hoover Road (4631 West 47<sup>th</sup> Street South).

**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 by the Governing Body and publication in the official county newspaper.

Commissioners present and voting were:

DAVID M. UNRUH \_\_\_\_\_  
TIM R. NORTON \_\_\_\_\_  
KELLY PARKS \_\_\_\_\_  
GWEN WELSHIMER \_\_\_\_\_  
KARL PETERJOHN \_\_\_\_\_

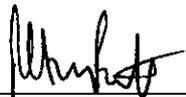
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

\_\_\_\_\_  
CHAIRMAN

ATTEST:

\_\_\_\_\_  
County Clerk  
APPROVED AS TO FORM:

  
\_\_\_\_\_  
ROBERT W. PARNACOTT,  
Assistant County Counselor

Did Truk attend  
+ vote?

## AGENDA ITEM REQUEST

**Proposed Agenda Item:** ZON2010-00020 and CON2010-00025 - Zone change from SF-20 Single-Family Residential ("SF-20") to LI Limited Industrial ("LI"). Conditional Use for Construction and Demolition Landfill (associated with a tree waste service) and rescind the portion of PO #57 pertaining to the property zoned LI; generally located south of 47th Street South and one-half mile east of Hoover Road (4631 West 47<sup>th</sup> Street South). District 2

**Presented By:** John L. Schlegel, Director of Planning *JLS*

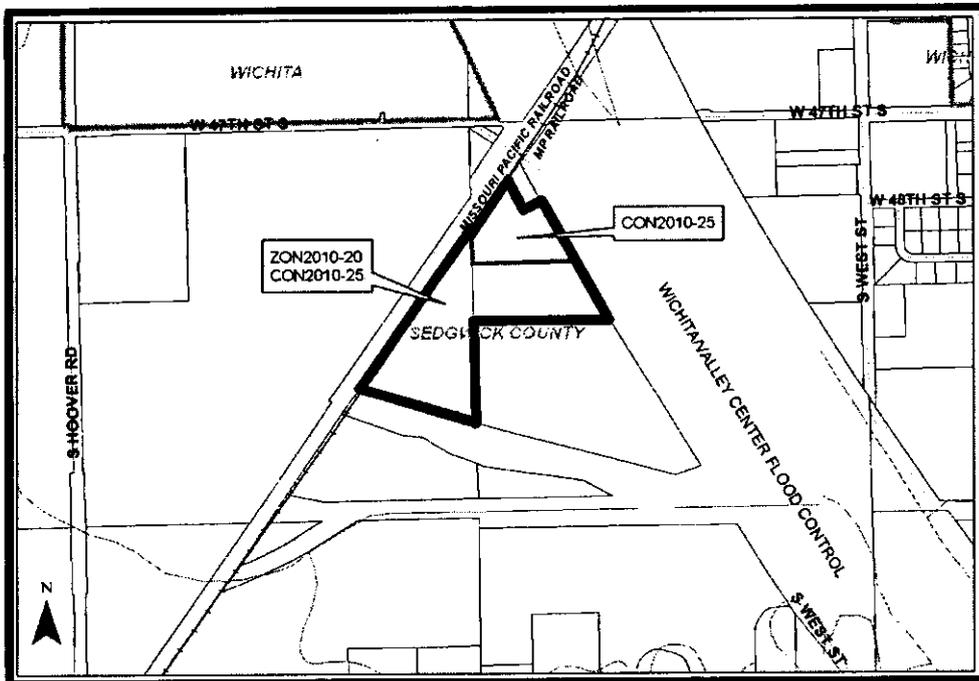
**Recommended Action:** Adopt the findings of the Metropolitan Area Planning Commission, approve the zone change, ZON2010-00020, to LI and the CON2010-00025, subject to the recommended conditions; rescind the portion of the Protective Overlay #57 contained within ZON2010-00020, and authorize the Chairman to sign the resolutions.

**Proposed Agenda Date:** August 11, 2010

**Outside Attendees:** Charles Edwardson d/b/a Alfred's Superior Tree Service (owner); MKEC Engineering Consultants, Inc., c/o Gene Rath (agent)

**Multimedia Presentation:** Powerpoint

**Donations:** Not applicable



**Background:** This is a request for a zone change from SF-20 Single-Family ("SF-20") to LI Limited Industrial ("LI") for 18 acres and a Conditional Use for Construction and Demolition Landfill, and the removal of Protective Overlay #57 from the LI property to be replaced with the conditions of the Conditional Use. The purpose of the request, according to the applicant is to store tree waste and other items collected as part of a tree service business and to burn tree waste brought to the site that is collected as part of the tree service business. The business obtains an annual open burn permit granted through the local agency on behalf of the state agency for activity. The applicant's business has had open burn permits in the vicinity for over 10 years, but changed location to the area in this request between 2006 and 2008. According to the applicant, he disposes of other items collected at the site obtained from operating the tree service by periodically taking it to other transfer stations or landfill disposal sites. No actual landfill involving the removal of soil and filling of materials from the waste collected will be done. The applicant filed the permit as a Construction and Demolition Landfill request due to the intention of disposing, by burning, of the tree waste, but also to allow stockpiling of the non-tree waste brought to the site until periodic disposal.

The 24-acre site is located south of 47th Street South and 1/2 mile east of Hoover Road (4631 West 47<sup>th</sup> Street South). Approximately five acres of the site already is zoned LI, and two acres are zoned GO General Office (GO) subject to PO #57 (SCZ-0793). On the LI zoned land, the allowed uses are: the tree service business, other similar low traffic and low sewage generating uses as may be approved by the Director Planning, but not including any landfill operations or any storage/baling as prohibited in Sec. III-D(6)(dd) and those uses permitted by right in the SF-20 zoning district. This includes residential uses otherwise prohibited on LI zoning. The tree service business included associated outdoor wood storage, splitting and chopping and the sale of wood products, as customarily found with a tree service business. The north part of the property is where the owner's house and office is located and is zoned GO General Office ("GO"), subject to PO #57.

Upon visiting the site, piles of wood and several trucks were visible onsite. Also, a pile of tires was stored along the fence, triggering a conflict with the outdoor baling/storage requirements, perhaps leading to the request for the construction and demolition landfill. The owner has indicated he intends to continue this practice. As visible from the 2008 aerial photography, onsite burning of a woodpile was occurring in the southwest corner of the unplatted tract subject to this LI rezoning request.

To the staff's knowledge, other similar low traffic and low sewage generating uses requiring specific approval by the Director of Planning have not be requested since approval of the case in 1999. Instead, the activity beyond the tree service business has been confined to the storing of other types of waste periodically removed from the site, but in conflict with the originally approved protective overlay conditions. A modification of uses would be to remove this vague reference to other similar uses and define the type of storage allowed.

The property borders the Wichita-Sedgwick County Flood Control Project, with the levee forming a common east property line. A 20-foot ingress-egress easement was granted by Sedgwick County to provide access to the subject property and the bordering property to the south as part of the land condemnation for the flood control project. In 2008, a new residence was constructed on the land to the south on property zoned SF-20. Access to this residence is via the ingress-egress easement. A

maintenance agreement was executed for the easement in 2007. The Union Pacific tracks form the western property line, and the land west of the railroad line is zoned SF-20 and in agricultural use. The property to the north of 47<sup>th</sup> Street South has been annexed to the City of Wichita. It is zoned SF-5 Single-Family Residential (“SF-5”). Trinity Point Addition, a single-family subdivision, is platted to within 1,000 feet of 47<sup>th</sup> Street South.

South of the application area, the Cowskin Creek flows into the Big Ditch. The application area is protected by a levee on the east and south; therefore, the land is not in the FEMA floodplain, but an area is shown as platted floodway on the plat from 2001. The area used as the burn site was approximately 150 feet north and west of the edge of the FEMA floodplain.

**Analysis:** The MAPC considered the requested zone change and Conditional Use at its meeting held July 8, 2010. The abutting property owner to the south spoke at the meeting and asked to keep a 500-foot buffer between the wood stockpiling activities and his property. MAPC voted to include a narrower buffer for the wood stockpiling, limited to the area designated on the site plan as floodway easement. The MAPC voted (10-0) to recommend the request be APPROVED subject to the following conditions:

- A. APPROVE the zone change (ZON2010-00020) to LI Limited Industrial (“LI”).
- B. APPROVE the Conditional Use request (CON2010-00025), subject to the following conditions:
  - (1) The Conditional Use shall permit those uses as permitted in the original protective overlay (PO #57) and those authorized by this Conditional Use, for a period of 15 years from the date of approval. The extension of this time limit would require approval of an amendment to the Conditional Use.
  - (2) Permitted uses on the property zoned LI Limited Industrial shall be limited to those uses permitted in SF-20 Single-Family Residential, and a tree service business, with associated outdoor wood storage, splitting and chopping, and the sale of wood products, as customarily found with a tree service business.

Storage/baling of accessory materials collected as part of the tree service business may be stored onsite but shall be periodically removed when the amount of material reaches 100 cubic yards or at least annually, whichever occurs first, removed to an offsite approved transfer station facility or landfill facility. These uses shall be stored on gravel or hard-surfaced areas and shall not be stored or located on the unplatted tract except within the area identified as the non-combustible storage area to the west of the primary tree burning area, or stored or located within 100 feet of east property line and 500 feet of the south property line of the platted tract.

No actual landfill activities or burying of any waste materials and including any activities that would require permitting by the Kansas Department of Health and Environment and/or Sedgwick County Environmental Resources shall be permitted on the site.

- (3) Outside storage of combustible materials shall comply with requirements of state and local fire code and air quality regulations. The applicant shall maintain a current open burn permit to be able to continue disposing of approved tree materials in this manner.
- (4) All activities shall be screened in compliance with the Unified Zoning Code and the Sedgwick County Nuisance Code.
- (5) Open burning shall be restricted to the burn area as shown in the southwest corner on the site plan; limiting burning to other parts of the site, as allowed by County, railroad right-of-way and roads.
- (6) The site plan shall be revised to designate those areas meeting the distance criteria for and as designated for the storage, open burning and stockpiling activities. No storage or stockpiling shall be allowed within the platted floodway. The revised site plan shall be submitted within 30 days.
- (7) The site shall be developed and operated in compliance with all of the conditions of UZC, and other state and local regulations.
- (8) No scrap vehicles or scrap metal/appliances waiting to be processed shall be visible from ground-level view from any public right-of-way or abutting properties.
- (9) Storage of all of scrap materials (vehicles, metals, appliances, etc., including bales of the just mentioned) waiting to be processed and the containers they are stored in shall be organized and be installed in an orderly manner, including an exposed perimeter, as specified by Environmental Resources to prevent rodent harborage and breeding.
- (10) The applicant shall maintain at all times an active program for the eradication and control of rodents.
- (11) Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
- (12) Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by the appropriate permitting agency and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the appropriate permitting agency.
- (13) Notification shall be given to the appropriate permitting agency of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with the appropriate permitting agency. All manifests for the disposal of fuels, oils, chemicals, or hazardous

wastes or materials must be kept on file at the site and available for review by the appropriate permitting agency.

- (14) The applicant shall implement a drainage plan approved the County Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
- (15) The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
- (16) All conditions of the Conditional Use shall be met within one year of approval.
- (17) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.
- (18) If approved, the conditions of PO #57 shall be rescinded pertaining only to the property in this zone case zoned LI.
- (19) No storage of materials, brush piles or trees shall be allowed in the floodway.

C. Rescind PO #57 with respect to the property zoned LI.

The property owner has protested the recommendation for zone change and Conditional Use. This protest represents 25.11 percent of the land area within the legal protest area for the zone change and 26.44 percent of the land area within the legal protest area for the Conditional Use. Thus, both actions require a three-fourth majority vote of the Board of County Commissioners to overturn the legally binding protest.

**Alternatives:**

1. Adopt the findings of the Metropolitan Area Planning Commission, approve the zone change, ZON2010-00020, to LI and CON2010-00025, subject to the recommended conditions; rescind the portion of the Protective Overlay #57 contained within ZON2010-00020, and authorize the Chairman to sign the resolutions.  
(An override of a valid protest requires a three-fourth majority vote of the Board of County Commissioners.)
2. Return such recommendation to the MAPC with a statement specifying the basis for the BOCC's failure to approve or disapprove (requires a simple majority vote).
3. Deny the zone change and the Conditional Use and override the MAPC recommendation.  
(An override of the MAPC's recommendation requires a two-third majority vote of the Board of County Commissioners.)

**Financial Considerations:**   *Approved by Division of Finance*

**Policy Considerations:** The MAPC recommendations are based upon the findings of fact stated in the MAPC minutes.

**Legal Considerations:**   <sup>WJ</sup> *Approved as to form and signed by County Counselor's Office*