

38-08

(150004)Published in The Derby Reporter on 5-30-08  
RESOLUTION NO. 38-08

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. ZON2006-00011**

Zone change request to GC General Commercial, subject to platting within one year and provision of Protective Overlay #172 on property described as:

The Hill Addition to Sedgwick County, Kansas. Generally located on the south side of 63rd Street South and west of State Highway K-15.

SUBJECT TO PLATTING WITHIN ONE YEAR AND THE PROVISION OF PROTECTIVE OVERLAY #172 AS FOLLOWS:

- (1) Allowable uses shall be limited to those allowed by right in the LC Limited Commercial zoning district, plus the following uses allowed by right in the GC General Commercial zoning district: vehicle and equipment sales, outdoor; storage, outdoor; warehouse, self-service storage.
- (2) Proposed uses other than those specified in Item #1 shall be allowed only by way of Conditional Use Permit or Protective Overlay Amendment, as specified in the Unified Zoning Code.
- (3) All development shall comply with Art. III, Sec. III-C.5 (A-O, McConnell AFB Airport Overlay District standards).
- (4) The applicant shall dedicate access controls at platting limiting the subject property to one right-in/right-out access onto 63<sup>rd</sup> Street, which shall be located a minimum of 75 feet east of the new Oliver Street.

- (5) The applicant shall dedicate access controls at platting limiting the subject property to two access points onto the new Oliver Street, the north of which shall be located a minimum of 75 feet from 63<sup>rd</sup> Street.
- (6) No structures shall be permitted that exceed two stories and/or 25 feet in height.
- (7) All proposed lighting shall comply with Art. IV, Sec. IV-B.4 of the Unified Zoning Code. No proposed pole lights (including base, standard, and fixtures) shall be taller than 14 feet. No pole lights shall be located within any of the building setback areas.
- (8) All signage shall comply with Sedgwick County Sign Code, except:
  - a. No rotating signs or signs with flashing lights shall be allowed.
  - b. No portable signs, off-site signs or billboards shall be allowed.
  - c. No pole signs shall be allowed.
  - d. Only one (1) monument sign shall be allowed, which shall be allowed on 63<sup>rd</sup> Street, and shall not exceed 30 feet in height and 128 square feet of sign area.
- (9) The site shall comply with all applicable landscaping/screening provisions and compatibility standards of the Unified Zoning Code.

**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.

Commissioners present and voting were:

DAVE UNRUH	<u>Yes</u>
TIM R. NORTON	<u>Yes</u>
THOMAS G. WINTERS	<u>Yes</u>
LUCY BURTNETT	<u>Yes</u>
BEN SCIORTINO	<u>Yes</u>

DATED this 12 day of March, 2008.

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

# AGENDA ITEM REQUEST

 **FILE COPY**

**Proposed Agenda Item:** ZON2006-00011 – Sedgwick County Zone change from “RR” Rural Residential to “GC” General Commercial. Generally located south of 63<sup>rd</sup> Street South and west of K-15. (District V)

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

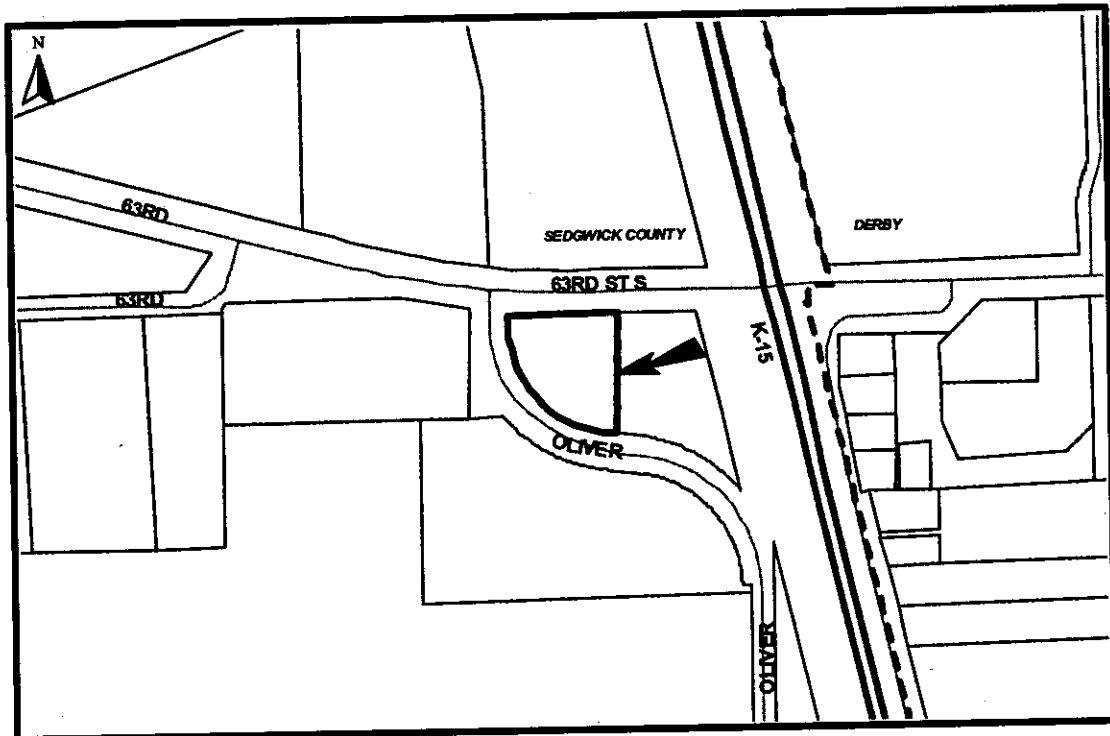
**Recommended Action:** Approve the zone change, subject to platting within one year and the provisions of Protective Overlay #172; adopt the findings of the Metropolitan Area Planning Commission; direct staff to prepare an appropriate resolution after the plat has been approved and authorize the Chairman to sign the resolution.

**Proposed Agenda Date:** May 24, 2006

**Outside Attendees:** Richard and Mary Jo Hill (applicants), 6701 Maple Ave., Wichita, KS 67209

**Multimedia Presentation:** Powerpoint

**Donations:** Not applicable



**Background:** The applicant requests a zone change for the subject property from "RR" Rural Residential to "GC" General Commercial. The subject property is located at the Southwest corner of K-15 and 63rd Street South, approximately 280 feet west of the K-15 right-of-way and is developed with a single-family residence. Also, the subject property lies within the "A-O III-S" Airport Overlay District. The applicant has offered a Protective Overlay limiting the range of allowable "GC" uses.

**Analysis:** The surrounding area is characterized by commercial and residential uses. The property to the north, across 63rd Street, is zoned "GC" Limited Commercial and developed with self-service storage and outdoor vehicle and equipment sales. The subject property is bounded by the new Oliver Street extension along its west and south boundaries. Just east of the subject property is a set of Burlington Northern Santa Fe (BNSF) railroad tracks. The properties to the west and south are zoned "RR" Rural Residential and are developed with single-family residences and agricultural uses. The property to the east, across K-15, is within City of Derby municipal boundaries and is developed with a variety of commercial and industrial uses, including a Lowe's Home Improvement Center.

There is an issue here with the proximity of the property to the BNSF railroad tracks. Eastbound vehicles that are stopped for the railroad crossing could block westbound drivers from turning south into this property. With the traffic volumes here, westbound vehicles could be stacked back through the railroad crossing and crossing gates. Forcing the left turns to the new Oliver Street will increase this stacking distance and provide maximum safety. At the request of County Engineering, this requirement is incorporated into the Protective Overlay as a condition of platting.

The application area lies within the City of Derby's zoning area of influence. Therefore, the Derby Planning commission heard this case on April 6, 2006, and unanimously approved per staff recommendations with two minor modifications. First, they recommended that Item #8 of the Protective Overlay be revised to require compliance to the City of Derby Sign Code. Second, they recommended Item #9 of the Protective Overlay be revised to require compliance to the City of Derby Landscape Ordinance. The subject property lies within the City of Derby platting area, so the plat will be required to comply with their Subdivision Regulations. The applicant objects to the Derby Planning Commission revisions for the following reasons: First, Derby planning staff indicated at the public hearing that the City of Derby had no intention of serving the subject property with utilities because it would require significant funding and effort to bore under K-15 to serve the site. Therefore, it was unlikely that Derby would ever annex the subject property. Second, the applicant's intention was to mirror the land use, signage and landscape standards approved for the property across the street (DP-223) for the Kuhn Company. The initial recommended conditions of approval incorporated DP-223 standards. Third, DP-223 was approved with no requirement to meet City of Derby signage or landscaping standards. Compliance with Derby's landscaping ordinance would be a financial burden on the applicant, as they would be required to landscape approximately 800 feet of street yard.

The MAPC heard the case on April 20, 2006. MAPC motioned to approve the request subject to the revisions recommended by the Derby Planning Commission and did not hear the MAPD staff presentation. The MAPC voted 6-5 to recommend approval subject to platting within one year and the following provisions of Protective Overlay #172, which includes Derby's recommendations:

- (1) Allowable uses shall be limited to those allowed by right in the "LC" Limited Commercial zoning district, plus the following uses allowed by right in the "GC" General Commercial zoning district: vehicle and equipment sales, outdoor; storage, outdoor; warehouse, self-service storage.
- (2) Proposed uses other than those specified in Item #1 shall be allowed only by way of Conditional Use Permit or Protective Overlay Amendment, as specified in the Unified Zoning Code.
- (3) All development shall comply with Art. III, Sec. III-C.5 ("A-O, McConnell AFB Airport Overlay District" standards).
- (4) The applicant shall dedicate access controls at platting limiting the subject property to one right-in/right-out access onto 63<sup>rd</sup> Street, which shall be located a minimum of 75 feet east of the new Oliver Street.
- (5) The applicant shall dedicate access controls at platting limiting the subject property to one right-in/right-out access onto 63<sup>rd</sup> Street, which shall be located a minimum of 75 feet east of the new Oliver Street.
- (6) No structures shall be permitted that exceed two stories and/or 25 feet in height.
- (7) All proposed lighting shall comply with Art. IV, Sec. IV-B.4 of the Unified Zoning Code. No proposed pole lights (including base, standard, and fixtures) shall be taller than 14 feet. No pole lights shall be located within any of the building setback areas.
- (8) All signage shall comply with Sedgwick County Sign Code, except:
  - a. No rotating signs or signs with flashing lights shall be allowed.
  - b. No portable signs, off-site signs or billboards shall be allowed.
  - c. No pole signs shall be allowed.
  - d. Only one (1) monument sign shall be allowed, which shall be allowed on 63<sup>rd</sup> Street, and shall not exceed six (6) feet in height and 15 feet in width.
- (9) The site shall comply with all applicable landscaping/screening provisions and compatibility standards of the Unified Zoning Code, except:
  - a. The applicant shall provide an irrigated street yard at least 10 feet in width adjacent to all street frontages.
  - b. The street yard shall be landscaped with one (1) shade tree or two (2) ornamental trees per 500 square feet of street yard area.
  - c. Parking areas in front of the primary structure shall be screened with a solid shrub row or hedgerow with a minimum height of three (3) feet.
  - d. All abutting residential uses shall be screened with a solid screening fence or wall of six (6) feet in height.

Following the vote, discussion ensued among MAPC commissioners regarding the reasoning implemented by several of the commissioners in their voting decision. At least one commissioner indicated that his vote would have been different had the discussion taken place prior to the vote.



The applicant has submitted a letter of appeal (attached) seeking a revision of provisions to strike provisions 8 and 9 of Protective Overlay #172, which would allow landscaping and signage per code requirements for the GC General Commercial zoning district.

**Alternatives:**

1. Approve the zone change, subject to platting within one year and the provisions of Protective Overlay #172; adopt the findings of the Metropolitan Area Planning Commission; direct staff to prepare an appropriate resolution after the plat has been approved and authorize the Chairman to sign the resolution; or
2. Return such recommendation to the MAPC with a statement specifying the basis for the BOCC's failure to approve or disapprove.
3. Deny the zone change and override the MAPC recommendation with a 2/3 vote.

**Financial Considerations:** Not applicable.

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

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

