

## **MEETING OF THE BOARD OF COUNTY COMMISSIONERS**

### **REGULAR MEETING**

**September 10, 1997**

The Regular Meeting of the Board of County Commissioners of Sedgwick County, Kansas, was called to order at 9:00 A.M., Wednesday, September 10, 1997, in the County Commission Meeting Room in the Courthouse in Wichita, Kansas, by Chairman Thomas G. Winters; with the following present: Chairman Pro Tem Paul W. Hancock; Commissioner Betsy Gwin; Commissioner Melody C. Miller; Commissioner Mark F. Schroeder; Mr. William P. Buchanan, County Manager; Mr. Richard Euson, County Counselor; Mr. Jarold D. Harrison, Assistant County Manager; Ms. Becky Allen-Bouska, Director, Bureau of Finance; Mr. Marvin Krout, Director, Metropolitan Area Planning Department; Mr. Paul Rosell, Chief Deputy, County Clerk; Ms. Irene Hart, Director, Bureau of Community Development; Mr. Doug Russell, Director, Department on Aging; Ms. Delia Lopez, Chief Deputy Appraiser, County Appraiser's Office; Mr. Jim Weber, P.E, Director, Sewer Operations and Maintenance; Ms. Deborah Donaldson, Director, COMCARE; Mr. David C. Spears, Director, Bureau of Public Services; Mr. Darren Muci, Director, Purchasing Department; Mr. Fred Ervin, Director, Public Relations; and Ms. Linda M. Leggett, Deputy County Clerk.

### **GUESTS**

Mr. Edward L. Pennington, 8345 North Broadway, Wichita  
Mr. Christopher Crawshaw, Vice President of Finance, Learjet Kansas  
Mr. Lee Parker, Attorney at Law  
Mr. David Franks, 3001 East 2nd Street, Wichita  
Mr. Joe L. Norton, Bond Counsel, Gilmore & Bell, P.C.

### **INVOCATION**

The Invocation was given by Mr. Pete Morris of the Christian Businessmen's Committee.

### **FLAG SALUTE**

### **ROLL CALL**

The Clerk reported, after calling roll, that all Commissioners were present.

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**CONSIDERATION OF MINUTES: Regular Meeting, August 20, 1997**

The Clerk reported that all Commissioners were present at the Regular Meeting of August 20, 1997.

**Chairman Winters** said, "Commissioners, you've had an opportunity to review the Minutes, what's the will of the Board?"

**MOTION**

Commissioner Hancock moved to adopt the Minutes of August 20, 1997, as presented.

Commissioner Gwin seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item."

**CERTIFICATION AS TO THE AVAILABILITY OF FUNDS**

**Ms. Becky Allen-Bouska**, Finance Director, greeted the Commissioners and said, "You have previously received the certification of funds for expenditures on today's Regular and Sewer District Agendas. I am available for questions if there are any."

**Chairman Winters** said, "I see no questions. Thank you very much Becky. Next item."

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### **PRESENTATION**

#### **A. PRESENTATION REGARDING SEDGWICK COUNTY'S CONTRIBUTION TO SUPPORT THE LEARJET PAINT AND DELIVERY CENTER CONSTRUCTION.**

**Ms. Irene Hart**, Director, Bureau of Community Development, greeted the Commissioners and said, "It is my pleasure today to introduce Jeffrey Bahr, who is a Vice President of Human Resources for Learjet and Christopher Crawshaw, who is Vice President of Finance for Learjet. They have come today to tell us about an exciting new facility and new promise here in Sedgwick County with Learjet."

**Mr. Christopher Crawshaw**, Vice President of Finance, Learjet, said, "We are pleased to be here from Learjet to talk to you about the paint and delivery center and some things that are going on with that. We are excited that both Sedgwick County and the City of Wichita are supporting our endeavors into this contribution to the community. We want to give you just a brief presentation on what this paint and delivery center means to Learjet, Wichita, and Sedgwick County and then maybe show you a few pictures of the construction efforts."

### **SLIDE PRESENTATION**

"First, before I get started on the slides, Mac Beatson, President of Learjet, wished to be here this morning. He was called out of town to Chicago yesterday and is working on the project for Bombardier and sends his apologies, so we will proceed without him. Before we talk specifically about the paint and delivery center, I thought we might take a quick glance of history and Bombardier Learjet because really this is a continuation of investment that has been occurring for several years. We take a look at the key Bombardier Learjet facility and program launch milestones. Bombardier required Learjet in April of 1990. Shortly after, the Learjet 60 program launch was announced in October of 1990. Just two years after that, the Learjet 45 program launch was announced in 1992. This was significant for Wichita because it was the first all new clean sheet aircraft for Learjet since its inception in 1962. Around 1991, Learjet was designated as the Bombardier Center of Excellence for the flight test center activity, all of Bombardier aerospace flight testing, all aerospace and flight test activities."

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“In order to do that a 70,000 square foot, \$8,000,000 building was completed in May of 1991. Just this year, in February, a \$10,000,000, 98,000 square foot building expansion was completed. At the time that was being completed, plans were already in place to start building a new \$8,000,000 paint and delivery center, which is why we are here today. Projected occupancy is October 1997. We’ll show some photos. Construction is well underway.

“We’d talk just a brief moment about facilities and the investment that is being made on new aircraft, but this goes further than that, it is new employees as well. This is a chart picturing Learjet’s employment, not just Wichita, total Learjet, but certainly a significant portion of the decisions and investments made for Learjet have occurred here in Wichita and Sedgwick County. The take away on this chart is that we are nearing 5,000 employees and since 1990 the head count has increased 74%.

“Want to talk to you just for a minute about what does this paint and delivery center mean, what the impact is here at Learjet Wichita. With the new clean sheet aircraft, the decision was made that Wichita would have the full integration of interior completion, paint, and delivery of the Learjet 45. This is significant. It has been many many years since Wichita has completed and delivered aircraft here in Wichita. As most of you know, our current production does take place here, delivering completion down in Tucson. We’re excited about that. That has led to increased employment levels. As a result of the full integration, we will be bringing 180 to 200 new jobs to Wichita. Forty-five to 50 of those are a direct result of the paint and delivery center. So those are considerable employment gains and we continue our upward growth here.

“It is a state of the art painting capability and aircraft delivery center. The real role and goal for this facility is to paint and complete Learjet 45s, paint customer aircraft that are at our Base facility here in town for maintenance, and to deliver aircraft. We do have a current paint facility, not for new aircraft, those are down in Tucson, but at the maintenance center. But this is the first aircraft delivery center that Learjet Wichita will have and we’re excited about that. It will give us the ability to increase capacity, to paint customer aircraft undergoing maintenance. Our current facility allows us to paint 30 aircraft a year. This new facility will allow us, and I will show a blue print of how it is laid out, but it will allow us to complete 130 aircraft in a year, which is a significant number of aircraft and leaves us room to do production aircraft and maintenance aircraft painting there.

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“The cycle time efficiencies for Learjet obviously is a major plus for us in Wichita as a result of the full integration. The new clean sheet aircraft was designed to be done down the line without any interruptions and disruptions and so that will go well for us. This new facility also gives us the ability to complete next generation and existing aircraft. We don’t know what the next generation of aircraft might be, but we do have the capability and the ability to run it through this facility. It is large enough to handle a Challenger aircraft in there and the existing aircraft, the 31-A and the 60, if production overflows capacity down in Tucson, we do have the capacity and the ability to take that in our paint and delivery center here.

“The one thing that is probably one of the biggest, and it is a soft side of it, but employee confidence and morale has been a big part. Since this was announced, the employees at Wichita are very very excited at Learjet. That goes for, and Jeff will talk about this a little bit, but it will lead us with the Union, that has helped us a little bit there.

“If I can take just two or three minutes more, I’d like to show a few slides on the projector there and then I will turn it over to Jeff Bahr and let him say a few words. I know this is a little bit to see, it’s an eye test, but what we wanted to show you is the Learjet facility as it is right now and where the paint delivery center really falls within this. Over here would be Ridge Road leading to the airport. You have Kellogg bordering up here, Tyler down here, and Learjet Way right here. We have some facilities over here for subassemblies and inventory control. Our manufacturing facilities are right in here, right new to Learjet Way. Here is where our engineering and flight test centers are located, the two buildings that I talked about are right there. The customer service facilities are right over here and here, right next to Learjet Way and flight safety is where the new paint and delivery center will go. That is on leased property and we are leasing that property from the Wichita Airport Authority.

“This is just a pictorial of the latest flight test center building that went into place, the \$10,000,000 building that opened February 1997 with Bombardier Global Express Aircraft in front of it, which is undergoing flight testing here.

“This is a rendering of the building as it will look when it is done. Down here is the north end and this looks out west. There are five open bays here. There will be three on the other side. I’ll show a layout of that which will show exactly what activities are taking place in there. This is a copy of the current layout and again I apologize it is fairly small. This is the north area. We have office areas and conference rooms up here.

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“These two bays right here are our delivery center for customers and those office areas and conference rooms are for our customers and these are where the actual deliveries of the Learjet 45 will take place. We have eight bays then for paint, two to strip and sand here, four prep bays, and two paint and cure facilities right here, moving aircraft in and out from the prep bays.

“Finally, this is a recent shot taken a week ago with the Learjet 45 in front of the building. Construction is progressing fine and as stated before, we expect to be in the building, occupied, by October. With that, I think I’d like to turn it over to Jeff Bahr. He is with Human Resources and he might want to say a few words.”

Mr. Jeff Bahr said, “I’ll be brief. Thank you for the opportunity to talk to you all. I’m in the shop every day. I’m through the offices every single day. I meet lots and lots of employees. I visit with our union representatives every single day and I can tell you that this one of the two most significant events that have occurred at Learjet Wichita since the beginning of the decade. The first Bombardier acquired Learjet. Since the beginning of the decade they have invested something short of about a billion dollars in the facility in terms of new products and the facility. But the second most significant event is this paint and delivery center. Whoever you talk to on that site, you know we’re kind of the little guy in town of the aircraft companies, although you can see the numbers for us are getting up there at almost 5,000, but we feel good about ourselves. It is the first time in 21 years almost we now have the capability at Learjet Wichita to not only build the planes and do sort of the exterior work except for the painting, but we now as well can do the interior, finishing, and painting. As you probably know, we’ve been sending our planes down to Tucson, Arizona to have that done. So we’re just as enthusiastic as you can believe and it has done a lot in this very competitive people market. I don’t know if anyone is unemployed in this town and if they are please raise your hand if you’ve got an application. Having said that, it is a real shot in the arm and on behalf of the employees and Mac Beatson at Learjet, I want to say to you on the Commission, thank you very much. Your support means a lot and we’re going forward. We appreciate it. Thank you.”

**Chairman Winters** said, “Please relay to Mac that we certainly wished he could have been here but we understand when business commitments call you out of town. We certainly want to say thank you to you gentlemen and Max. As you were going through those lists of good things you had on there, I think the last one was employee confidence and morale. You can expand that to community confidence and morale.

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“Because I know that you work with the employees there every day and their work attitude is certainly very important, but as communities see companies continue to make brick and mortar investments and you’ve done that and this is a plus for the Airport Authority in your lease arrangement with them. It is a plus for continued employment. We see lots of business and industries come into communities and be gone. Last week we were fortunate with this Caribbean Cruise Line came in and purchased a building. That is an exciting and positive aspect, when you see people do this construction, because that is where the citizens of our County are going to be able to work and have a very good job working in the community. We believe that Wichita is the Air Capital of the World and Tucson is a nice place, but they’re not the Air Capital of the World. We’re excited that you have made the decision to build this paint and delivery center. It is certainly a good opportunity for the community. We appreciate very much your coming today and giving us an update on the latest at Learjet. I’m always hesitant to say this because I’m never sure I’m going to pronounce it right, but Bombardier, we’re certainly pleased that they have taken the strength that is really needed to make this product that you’ve got really go. With that, Commissioners, unless someone else has a comment, I would take a Motion to receive and file this report.”

### **MOTION**

Commissioner Gwin moved to receive and file.

Commissioner Hancock seconded the Motion.

There was no discussion on the Motion, the vote was called.

### **VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, “Thank you gentlemen very much for being here, we appreciate it. Madam Clerk, would you call the next item?”

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**DONATION**

**B. DONATION OF A LOWRY ORGAN TO THE BUREAU OF COMPREHENSIVE COMMUNITY CARE'S (COMCARE) COMMUNITY SUPPORT SERVICES PROGRAM.**

**Ms. Deborah Donaldson**, Director, COMCARE, greeted the Commissioners and said, "This particular donation is currently being used with psycho-social groups and provides music therapy and is located at our homeless program. I would recommend that we accept the donation and send a letter of thanks to the estate that donated this."

**MOTION**

Commissioner Miller moved to accept the donation and authorize the Chairman to sign a letter of appreciation.

Commissioner Hancock seconded the Motion.

**Commissioner Hancock** said, "I request that Debbie Donaldson be required to give a concert."

**Chairman Winters** said, "Is that part of the deal?"

**Ms. Donaldson** said, "I think the last time I had piano lessons and this is an organ, I was maybe nine. I'm not sure you would really want to hear."

**Chairman Winters** said, "Thank you. We have a Motion and a second. Is there any other discussion? Seeing none, call the vote."



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**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Thank you Debbie. Next item."

**ADOPT A HIGHWAY**

**C. ADOPT A HIGHWAY APPLICATIONS (TWO).**

- 1. APPLICATION BY VALLEY CENTER FIRST UNITED METHODIST CHURCH FOR THE SEDGWICK COUNTY ADOPT A HIGHWAY PROGRAM ON 85TH STREET NORTH FROM THE VALLEY CENTER CITY LIMITS TO HYDRAULIC. DISTRICT #4.**

**Mr. David C. Spears**, P.E., Director/County Engineer, Bureau of Public Services, greeted the Commissioners and said, "Item C-1 is a renewal agreement with the Valley Center First United Methodist Church regarding our Adopt-A-Highway litter pickup program. They will be responsible for 85th Street North from the Valley Center city limits to Hydraulic. Recommend that you approve the Agreement and authorize the Chairman to sign."

**MOTION**

Commissioner Miller moved to approve the Application and authorize the Chairman to sign.

Commissioner Hancock seconded the Motion.

There was no discussion on the Motion, the vote was called.

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**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item."

- 2. APPLICATION BY JUDGE JAMES V. RIDDEL BOYS RANCH FOR THE SEDGWICK COUNTY ADOPT A HIGHWAY PROGRAM ON VIOLA ROAD FROM MACARTHUR ROAD TO U.S. 54. DISTRICT #3.**

**Mr. Spears** said, "Item C-2 is similar to the first item. It is a renewal agreement with the Judge James Riddel Boys Ranch regarding our Adopt-A-Highway litter pickup program. They will be responsible for Viola Road from MacArthur Road to U.S. 54. Recommend that you approve the Agreement and authorize the Chairman to sign."

**MOTION**

Commissioner Gwin moved to approve the Application and authorize the Chairman to sign.

Commissioner Miller seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

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**Chairman Winters** said, "Thank you. Next item."

**DEFERRED ITEM**

**D. REVISION OF PERSONNEL POLICY 4.303 INITIAL PROBATION AND 4.903 PERFORMANCE EVALUATION.**

This item was deferred at the August 27, 1997 Commission Meeting.

**Mr. William Buchanan**, County Manager, said, "Excuse me Commissioners, apparently we didn't have an opportunity to meet with all the Commission on this so therefore I would like to defer this for a week."

**Commissioner Schroeder** said, "Is this the drug policy?"

**Mr. Buchanan** said, "That's the one you wanted?"

**Chairman Winters** said, "This is the performance evaluation."

**Mr. Buchanan** said, "I'm sorry."

**Commissioner Hancock** said, "I guess we know what we're going to do with it now."

**Chairman Winters** said, "I think we talked about this. Is everyone prepared to talk about the evaluation policy today? Okay Joe."

**Mr. Joe Cotton**, Assistant Director, Personnel Department, greeted the Commissioners and said, "We are requesting approval of the revision of Policy 4.303 Initial Probation and 4.903 Performance Evaluation. The new Performance Evaluation developed by a committee of 15 employees with 5 of the Personnel staff as support. These employees were, and Bob Rogers was the Chair, Sherry Anderson, Marilyn Chapman, Mark Coronado, Jo Hilman, Stacy Nile, Lyman Reese, Stephani Johns, Mark Borst, Scott Childs, Chief Curmode, Bob Lamkey, Gina Clonch, George Gatlin, Mary Williams, Harry Hayes, Mary Ann Nichols, Jo Templin, Connie McAfee, and myself.

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“The evaluation was then field tested by 26 employees and 26 supervisors. The field testers suggested some minor changes for review. These suggestions were taken back to the committee for consideration and most were taken into consideration and utilized. They were primarily wording changes.

“The primary difference between the old policy and the new policy is that it is based upon performance criteria developed by the committee and included in an instruction manual. There are no numbers assigned as the old policy had but performance is judged on exceed, fully meets, meets most, or does not meet. There is also a six month employee review so that supervisors and employees may meet and establish goals at work and performance and this is mandatory. The change in the probation policy is to accommodate the performance evaluation and we would request your approval.”

**Chairman Winters** said, “Thank you very much Joe. Commissioners, you’ve had an opportunity to either visit with Joe or review these policies, any questions?”

**MOTION**

Commissioner Schroeder moved to approve the policy revisions.

Commissioner Miller seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, “Thank you very much Joe. Next item.”

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**PLANNING DEPARTMENT**

**E. CASE NUMBER CU-447 - CONDITIONAL USE PERMIT TO ALLOW A RESTAURANT/CLUB, LOCATED ON THE NORTH SIDE OF 69TH STREET NORTH AND 300 FEET EAST OF BROADWAY.**

**Mr. Marvin Krout**, Director, Metropolitan Area Planning Department, greeted the Commissioners and said, "I have one item on your agenda. Could I have the first slide?"

**SLIDE PRESENTATION**

"This concerns seven acres of land. This seven acres of land is on the north side of 69th Street North. It is a few hundred feet east of Broadway. This is I-135 and so this is the area in between 69th Street North, which is paved, not to a County standard, but it is paved today. This area in here is part of the city limits of Park City today. This is Park City along the I-135, the remaining area in the County and to the north is unincorporated. The request is for a conditional use permit for a drinking establishment and a club. The zoning code, as adopted in 1996, for the City and the County both say that both drinking establishments and night clubs, if they are within 200 feet of a residential district, whatever the zoning is, commercial or industrial, they have to obtain a conditional use permit. You can see from the map of this area, this is suburban residential zoned, this is the rural residential zone. The only area that is not residential on the map is this area that I will talk about in a minute that is part of the conditional use.

"There is a somewhat tortuous history to this tract. In 1975, the seven acres, the area in black tape was approved for a conditional use by the County Commission for use as a non profit institutional lodge. A building was built with parking and operated as the Fraternal Order of the Eagles until about 1985. The record shows there was neighborhood opposition to that request by the Planning Commission and the Valley Center Planning Commission, which at that time had the sphere of influence in this area, were both supportive of the request for the lodge.

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“The lodge operated until about 1984 or ‘85. It was closed and then purchased by the current owner who is the applicant on this current conditional use request. In 1986, that property owner applied for industrial zoning on the seven acres, on the same seven acres that is in the black tape and the County commission approved that industrial zoning. It was called the E Zoning District at that time for the front 258 feet, that is the portion where the existing building and improvements are located. He indicated at the time that his intent was to operate a facility in which developmentally disabled individuals would be located in this facility and would be assembling component parts and so it was the assembly operation that required industrial zoning. The County didn’t have any tools at that time in the County Zoning Code to restrict other uses that might otherwise be permitted, commercial or industrial uses and so there was the intent but the zoning would also have allowed other uses. There were neighborhood protests again but the zoning was approved back in 1986. That facility for developmentally disabled apparently did operate for some time until it was closed in 1993.

“The record shows that there was a food handling license that was issued by County Health in 1993 and renewed again in ‘94 and ‘95 for what we presume was a restaurant use that was called Sunflower Depot that later closed at this site. More recently, the ground floor of this building, and as you will see, it is a two story building. The ground floor has been used as what is called The Project Bridge School. This is a specialized school curriculum that meets the public school curriculum requirements for emotionally disturbed children. It is a special program that draws people from the school districts in an eight county area. I think there are 30 or so children, all the way from K through 12, that have been at this location. Technically, that use under the zoning code requires a conditional use in an industrial district. A school does or a church would also, in an industrial district, require a conditional use. There is a desire now to renew that, to continue to operate that school. I understand it is operating now and so there is on file with our office today a separate request for a school, for a conditional use for the school on the ground floor of this building. That case will be going to the Park City Planning Commission next week and then to the Metropolitan Area Planning Commission later this month. Assuming that the case continues, then it will be on your agenda in October.

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“In February of 1997, of this year, the applicant obtained a certificate from the County Clerk and he needed to obtain that certificate in order to get an alcohol beverage license from the State. The certificate asked two questions, you are supposed to check one both or the other. Either that there is no zoning that is applicable in this particular part of the State. There is obviously zoning that is applicable in the County. The second box says that there is zoning applicable and the zoning is appropriate to accommodate this alcohol license use. Both boxes were checked off by the County Clerk’s Office rather than one or the other. To check either of the boxes off would have been in error. But on the basis of those checked boxes and that certificate, the applicant did obtain an alcohol beverage license from the State and did open up a facility that has been known as Northern Nights and that facility operated for a two or three month period in the spring at this location.

“There were neighborhood complaints. County Code Enforcement got involved and County Code Enforcement determined that whether or not the certificate was issued by the County Clerk’s Office or the license issued by the State, this was in violation of the County Zoning Code, which requires a conditional use if you are within 200 feet of a residential district, in order to have zoning approval to have this kind of use.

“The applicant was told that he needed to file a conditional use. I think he must have had the impression somehow that this was sort of a proforma thing, like getting a license, but if he thought that, when he read the staff report and when he appeared at the Park City Planning Commission, I think that he saw that this was not going to be a proforma issue but in fact all the types of considerations that you look at when you look at other zoning cases and conditional use cases would apply in this case. In this particular case, both the staff recommended denial and the Park City Planning Commission, which now has the zoning area of influence as established for this area, also recommended denial. The staff report indicates that we do not believe that this is an appropriate use. It doesn’t conform to the general pattern of surrounding zoning. There is, and I’ll show you in the aerial photograph, there is a club that is located and oriented toward Broadway, a tavern, it is called the Quarter Horse Club. It has been there for sometime but this use is oriented toward 69th Street. There is a home immediately to the east. There are other homes up and down 69th Street on the south side. So we felt that the general character of the zoning and land use was residential and 69th Street is not an appropriate street to locate commercial use. It is not designed or built to handle that kind of traffic. We thought that this use would be detrimental to the neighborhood because it operated for several months illegally without the conditional use permit.

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“I guess neighbors had an opportunity to experience whether or not it was going to be a detrimental use or not and they testified at the Park City Planning Commission and at the MAPC meeting that it was detrimental and they cited problems with noise, late hours. There was noise, although the applicant indicated that at some point in time the County Health Officials came out with decibel meters and quantitatively found that it didn't violate their usual standard for noise, which is 5 decibels over the existing ambient background noise. But that quantitative standard doesn't necessarily indicate the kind of noise that might be objectionable in a neighborhood. They also expressed concerns about traffic on 69th Street and also expressed concerns about the trash, beer bottles, other kinds of trash that have spilled over from this area, as well as the other impacts.

“We also felt that in this particular case, not having the drinking establishment and night club was not a severe hardship to this property owner because he still has a wide variety of uses that are available to him, which is the school use that he has operated and is asking again for the conditional use to renew. Other uses of a commercial or industrial nature are allowed in the industrial uses, so there is a range of uses this property can put to without being permitted for the drinking establishment and the night club use.

“The Planning Commission held their hearing. They took testimony from the applicant and from neighbors who were there again. The applicant indicated that he felt that this was an isolated location, that this site has topography and vegetation both to screen the use from the residential area. I'll show you slides of that in a minute. That he had tried to operate his use in a neighborly way and done everything that he thought legally he was supposed to do to get to the point of opening up that Northern Nights use.

“There was some confusion about what he could do with this property. I have to confess that I am responsible for some of that confusion and so the Planning Commission initially at their hearing deferred the case for two weeks. Let me tell you why. I indicated that I thought that until the outcome I thought that under the Unified Zoning Code he had, while he couldn't operate a night club, and while he couldn't operate a drinking establishment that was primarily in the business of selling alcohol and beer, that he could operate a restaurant for sure. I felt that under the definition of tavern and drinking establishment, that as long as the alcohol sales was a minor portion of the total sales that the primary use was a restaurant, that according to our zoning code, he would be allowed, like a Pizza Hut selling beer, to operate without having to get a conditional use permit.



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“Well, there was a little confusion about whether that was true or not and so we deferred the case for two weeks to look at it further. County Code Enforcement and the County Counselor’s Office looked at the definition of tavern and drinking establishment again and I remember, I don’t know if Rich does, but we had this very large committee that was involved in that definition, because we were trying to consolidate the City’s licensing and zoning rules with the County’s rules. The County didn’t allow these without any conditional use permit before but did have something called a drinking establishment in your County Code. The definition though differed from the City’s definition of a drinking establishment. The Zoning definition of a drinking establishment in the City Zoning Code differed from the City’s License definition of a drinking establishment, so it was fairly complicated and there was a committee that came up with a definition having several humps. As a result, we don’t have apparently what I thought we had, which was a uniform definition which would allow in the County as well as in the City for you to have a Pizza Hut selling beer without having to get a special conditional use permit.

“The way that we have inadvertently apparently written that definition, any use that involves an alcohol license, a drinking establishment license in the County, that is within 200 feet of a residential district, even if it is a minor part of a business, will have to get a conditional use. I would like to address that at some point in the future, because I think that wasn’t our intent in making it uniform, but right now that is the interpretation of the County Counselor and County Code Enforcement have of the code. So it means that he would have a restaurant at this location. He could have other commercial or residential uses, but he could not sell any amount of alcohol without the conditional use permit. Regardless, he couldn’t have a night club, which is a part of the use, he had karaoke and some other activities that maybe he can describe for you better, entertainment types of activities that would be located here.

“So we came back to the Planning Commission and I explained that he could have a restaurant use but not sell alcohol without a conditional use permit. The Planning Commission had closed the initial hearing but they reopened it and allowed both the applicant and an attorney representing one of the nearby owners to speak. The Planning Commission voted eight to zero to recommend denial following the Park City’s Planning Commission’s recommendation by a four to zero vote to recommend denial. It is the Park City’s Planning Commission’s vote that basically forces a unanimous vote of the County Commission under the zoning code in order to override that recommendation and approve a conditional use for this property.

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“This is the aerial photograph. This is the use involved and we’ll focus on. Here’s the building and there is parking on either side. The lagoon in the back. This is the club that is on the intersection of Broadway and 69th Street. There is a residence to the east and you’ll see scattered residences along the south. This is the site plan for the area. This is the building in question. There is parking on either side of the use. The front on 69th Street. We’re looking now from 69th Street across north, that looks like it is more to the east. This is 69th Street and we’re looking from east of the site across the site. There is a tree row that you’ll see better that is directly in front of the building, but we’re in a cleared area that is to the east of the site. This is again the east side of the site. There is a hedgerow and some topography change between this property and the home that is immediately to the east. This is looking back south, 69th Street would be this location. This is a graveled parking area and there is more parking area on the other side of the building. This is looking at the driveway down to 69th Street. This is looking at 69th Street to the east, 135 in the background. This is looking to the west and right about here is Broadway and it is graveled west of Broadway and it is paved to some type of standard. This is the driveway to Northern Nights. This is the site again. This is the parking area to the west of the site. This building has two levels and this is sort of an upper level of parking to the west side of the building, I mean on the lower level of parking on the west side of the building. You can see the ground floor here and the upper floor here. This is west of the building. Again the driveway and the lower level parking to the back. This is again looking east. This is the tree row that is directly in front of the site. That’s the building in question at 69th Street. This is another view looking down toward Broadway which is that stop sign. Back to the aerial photograph and the zoning map and I’ll try to answer any questions you have.”

**Chairman Winters** said, “Thank you Marvin. Commissioner Gwin.”

**Commissioner Gwin** said, “Marvin, I’m a little confused. Does the applicant want to operate a bar and a school, both?”

**Mr. Krout** said, “The Comprehensive Plan does encourage mixed uses but I don’t think that is exactly what we had in mind. You’ll have to ask him. I think there was a period of time this spring when both of those were operating. They did have separate hours of operation. The school was a daytime use and I think this club was a night time use. That is an issue that we’ll wait for your decision on this case so we’ll know how to deal with the school site when it comes up.”

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**Commissioner Gwin** said, "All right, thank you."

**Chairman Winters** said, "Commissioner Miller."

**Commissioner Miller** said, "Thank you Mr. Chairman. Just some clarification. Marvin, you are saying that in terms of the number of Commissioners to override the decision that has already been made by two previous commissions would have to be unanimous?"

**Mr. Krout** said, "Yes."

**Commissioner Miller** said, "The other would be clarification from Counsel. Mr. Euson, would you once again for the public give us your interpretation of what a drinking establishment would be and therefore tell us what the statutes say must be intact for us to certify?"

**Mr. Richard Euson**, County Counselor, said, "I will try to do that briefly and it is difficult. When we enacted the Unified Zoning Code, we intended to have as many provisions common to both the City and the County as was possible. Marvin seems to recall that when the committee was formulating this, during a period of more than a year, this issue was discussed and the idea was to allow restaurants in an area that may serve alcohol, but no more than 50% of their gross receipts, and to not allow drinking establishments, those which have more than 50% of their gross receipts in alcohol unless they had a conditional use. That, according to Marvin, was the intent. That, according to Marvin, was the committee's intent but somehow or another that never got enacted into the County's regulations. So we define a drinking establishment a little bit differently than the City does therefore we treat it differently. We say that any percentage of beer receipts qualifies you as a drinking establishment and therefore you must get a conditional use permit if your proposed use is as is in this case, within 200 feet of a residential area. If this were inside the City limits, they would be able to operate a restaurant without any problem. Because it is in the County, it is a drinking establishment, which under our code is defined as any establishment that serves any alcohol."

**Commissioner Miller** said, "Okay, very good. Thank you."

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**Commissioner Gwin** said, "Excuse me, I guess I have a follow up and I don't know whether you know City law or not, but does the City allow bars and restaurants to be next to schools?"

**Mr. Euson** said, "Maybe Marvin can help me with that, I don't know."

**Commissioner Gwin** said, "Is there a setback or set aside or so much separation that has to be between bars and schools?"

**Mr. Krout** said, "If the bar is a drinking establishment that sells, for example, Players would fall into that category and Bennigans wouldn't. Normally a school or a church are going to be zoned residential, just like a home would be. So the same 200-foot conditional use requirement would kick in. But they would have to go through a public hearing and have special approval to locate if they are within 20 feet. If they were more than 200 feet away, no they would be allowed by right."

**Commissioner Gwin** said, "Thanks."

**Chairman Winters** said, "All right, thank you. Commissioners, any other questions? If not, we're going to open it up to the public to address the Commissioners. We would first ask if there is anyone here who would like to speak in support of this application request. If there is anyone who would like to speak in support this would be a time to do it. Please come forward and give your name and address for the record. We're going to try to limit your comments to five minutes."

**Mr. Edward L. Pennington**, 8345 N. Broadway, Valley Center, Kansas, 67147, said, "I'm the applicant and owner of the property. I did not come prepared to speak today. As you have listened and watching your faces, I feel that you are maybe as confused as I am over the whole circumstance of the use of this building. I do not have a lot of comment today. I do want to clarify for Commissioner Gwin that at no time have I asked or would approve of operating a school and a bar in the same location. Through legal process, it was established that there could be a club restaurant there so that is what we proceeded to do. The school gave notice on their contract. I accepted that notice. We're not going to use the building through the Planning Commission meetings that we have been to, the last three of four months, however long it has been."

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“It is quite obvious that it looks as this would not be approved at any point during the process, so I went back to the Planning Commission and asked for the school program to reinstate and that is where we stand today. I do applaud Mr. Krout for recognizing and being very fair in his comments. There were very many mistakes made through this process. I do feel that, I am not the person operating the club, I feel that the person has been put in a very hard state of hardship, personally, by the investments in the improvements, the licenses, everything done legally to open and get into the operation for three months and then be told you can’t operate. As the owner, there are options for me. I think it is quite interesting that we established a location in ‘75 that was a club restaurant bar, an Eagle’s location where you went and bought drinks and I operated at the time it was called a Light Industrial category and was allowed to do anything under that category until March 1996. Had this club opened prior to March 1996, it would still be operating today. Many mistakes made and I’ll continue to use the building in another category.”

**Chairman Winters** said, “Thank you Mr. Pennington. Commissioner Gwin has a question.”

**Commissioner Gwin** said, “Thank you Mr. Chairman. I appreciate your clarification because that was a facetious questions, but I was making an assumption that you assumed that this wasn’t going to go anywhere and so your next choice was to reinstate that school. How realistic is it, I notice that it says in the minutes that the lease had expired, the contract had expired and they are now leasing on a month to month just to store equipment. Is it realistic that they will be using it for storage or . . .”

**Mr. Pennington** said, “No, they want the school program there. They are currently reviewing the lease contract that I developed for them to look at. We have, through the Planning Commission, gained and I can’t speak to law, but we’re allowed to use it for that use until such time as a conditional use is denied. So they would be operating as if they are going to be there, but realizing that if the conditional use does not go through that they would have to vacate.”

**Commissioner Gwin** said, “I just have one correction that you said everything had been done legally to operate that except to have the permission of Code Enforcement and the authority of this Board of County Commissioners and those are two fairly big exceptions.”

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**Mr. Pennington** said, "Had that been stated prior to opening it would have been done. If it had not been a complaint, it was relayed to me that it would not have been an issue and it wouldn't have been caught. It wasn't for me to catch it, it is for the County to have a system that catches it before you operate."

**Commissioner Gwin** said, "That's why you are here. Thank you Mr. Chairman."

**Chairman Winters** said, "Thank you. Any other questions of Mr. Pennington? Thank you very much sir. Is there anyone else who would like to speak in support of this application? Come to the podium please. Give your name and address."

**Mr. Paul Rosell**, Chief Deputy Clerk, County Clerk's Office, said, "I just wanted to make a clarification. I'm not speaking in support or in opposition of the application, but my boss, James Alford, who is away at another appointment this morning, did sign off on a Kansas Department of Revenue Alcohol Beverage Control permit. He signed it the 10th of February 1997, shortly after being sworn into office. On that permit, item number one, I hereby certify that the building and premises described above are within an area zoned for front part light industrial purposes, 285 feet, back part rural residential. That is the extent, the sole extent of the responsibility of the Clerk's Office is to call Code Enforcement and then have Code Enforcement tell us the zoning of the proposed property for the site and then we simply certify what we are told by Code Enforcement. So not speaking in favor or against this applicant. We did what we were supposed to do. When they received this in Topeka, they issued the license. That is what happened. We did our job. I'm sorry for anybody that got hurt by this, but we did what we were supposed to do."

**Chairman Winters** said, "Thank you. Commissioner Miller has a question I think."

**Commissioner Miller** said, "Thank you Mr. Chairman. I'm not sure that it is actually going to go to you Mr. Rosell. I would probably actually need to involve Marvin once again and is Mr. Wilsey here by chance?"

**Mr. Krout** said, "No ma'am."

**Commissioner Miller** said, "Then Marvin, you would be the individual."

**Chairman Winters** said, "Thanks Mr. Rosell."

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**Commissioner Miller** said, “When Mr. Rosell and the medley of mistakes that have been alluded to by Mr. Pennington, when was Code Enforcement, once again for the record, actually involved in this whole scenario? When was Sedgwick County Code Enforcement actually involved, looked at the zoning site, and stated their concurrence that they were properly or improperly?”

**Mr. Krout** said, “I am not aware that County Code Enforcement was contacted, but apparently someone in the Clerk’s Office must have contacted them to sign off on this certificate. I think that . . . and County Code Enforcement has had discussions with the County Clerk’s Office about this issue since it came up. We advised them to sit down and discuss the issue. I think it is true that was filled out says front part light industrial and back part rural residential, but I think that the way that it was filled out it left the impression for the State that this was zoning that was appropriate. Then the second part of the form says I certify that there are no zoning laws in effect regulating the use of real property and that was filled out also indicating the County of Sedgwick. So it also gave the impression that there is no zoning that is applicable. I guess the State could probably have said well this doesn’t give us the information we really need to know so let’s go back to the County Clerk and ask them what they mean, but they didn’t. I think maybe the County Clerk didn’t know that conditional uses were required by the zoning code and that the zoning is light industrial. So I think there were assumptions that were made in this process and I think there is a better communication now between those two offices and that problem won’t occur again.”

**Commissioner Miller** said, “I guess the actual question that I’m asking though is when was it perceived by all parties and agreed that you are not in compliance and you therefore need to seek your conditional use permit.”

**Mr. Krout** said, “That was about March of 1997, after Northern Nights got their State permit and opened up operations and Code Enforcement received complaints.”

**Commissioner Miller** said, “Okay, so it was by way of complaints that code enforcement went out and inspected and therefore found out from their perspective that they were not in compliance. Now this is our Code Enforcement, being able to interpret our codes and being able to parley and talk with our County Council for interpretation once again. I guess the point I’m making is that the issue here is that Mr. Pennington is requesting a conditional use permit and it is based upon what codes basically dictate for this particular zoning area, correct?”

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**Mr. Krout** said, "Right."

**Commissioner Miller** said, "So we're looking at the issue in front of us as to whether or not he indeed is in compliance and in concurrence with the interpretation of what our codes actually state and it is very clear that in this point of time that the facility is not."

**Mr. Krout** said, "It is clear that he is not in compliance. I think that Mr. Pennington did act in good faith and I think there was a communication problem about this certificate and what it means and the County Clerk now, if they get a request like this again, will take a closer look at it and contact County Code Enforcement and it will be clearer to the person asking for that certificate whether or not they do have appropriate zoning."

**Commissioner Miller** said, "Okay. I don't have any further comments at this time. Thank you Mr. Chairman."

**Chairman Winters** said, "Thank you. Commissioner Schroeder."

**Commissioner Schroeder** said, "My question is for Rich Euson. Rich, you heard the testimony, if you want to call it that, of Mr. Rosell. In fact, is that the correct way to proceed with business in that office? Did they do what they were supposed to do?"

**Mr. Euson** said, "I don't know because I have not seen that form. I'm not familiar with it. It appears to me that there are one of two boxes you must check and one of them talks about a particular zoning being in effect and the other one talks about the fact that there is no zoning governing it and that information is supposed to tell the Alcohol Beverage Control people in the Department of Revenue in Topeka whether they should or should not issue a license. Because they will not issue a license unless either the zoning is correct or there is no zoning. My understand of the facts is that both of those boxes were checked. Now, if I were the Department of Revenue and both of those boxes were checked, it would indicate to me pretty clearly that a mistake had been made and I would inquire into it and they did not do that. They issued a license."

**Commissioner Schroeder** said, "So a mistake was made in the Clerk's Office by checking both boxes and the Department of Revenue should have caught that."



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**Mr. Euson** said, "So if both boxes were checked as I believe the facts are then yes a mistake was made in the Clerk's Office but a bigger mistake was made in Topeka and that license should never have been issued without further inquiry."

**Commissioner Schroeder** said, "Okay, thank you."

**Chairman Winters** said, "Thank you. We're still taking public comment. Is there anyone else here who would like to address the Commission on this? Yes, please come forward sir. Please give your name and address for the record and you're limited to five minutes."

**Mr. Eddie Pennington**, 106 Franklin, Sedgwick Kansas, said, "My wife and I operated the club. We aren't the land owners. We operated it under a lease contract with my father, Edward Pennington. I don't have a whole lot of comment because I've virtually been put out of business. Upon the denial of the zoning commission on July 31, the State made it very clear what I had to do and the license has been turned into the State for a refund. In about a three week period that we went through the Planning Commission meetings was not ample time to get things in order to do any other business within that premises. It is quite a large premises. It would contain approximately 6,000 square feet on the upper level that we occupied with a restaurant and a club. The only thing I'm concerned about is that number one, I in good faith did everything that was necessary to obtain the proper permits, licenses, et cetera, prior to the opening date on March 1. I operated that business until approximately June, when I was notified that there was anything even wrong with the zoning or code. As far as I knew, up to that point, I had obtained all the approvals necessary. At that time, it was Code Enforcement who actually contacted the land owner and came out and reviewed the premises and things transpired from there.

"I'm concerned that somebody like me can work a long time to be able to make an investment into a business and in good faith open that business and be shut down in such a short time frame and lose everything that my wife and I had put in to getting this going. The place was completely renovated by us clear down to the floors, the walls, everything. We spent our entire investment. We obtained small business administration loans to get the business going. Quite a number of other issues took place to have the business start.

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“Basically, we’re pretty well finished on what we can do. The State has got our license back. We had to vacate the premises to allow the land owner to get some additional use and not lose any income on the property. I’m concerned that a mistake like this can be allowed to be made and at this point really all I can do is that hope that something like this never happens to anybody again. This has been personally financially devastating on my family. We both come from very sound jobs to be able to open this place. We spent many years accumulating an investment that we could put into a business of our own and at this point we have nothing. I would encourage you to mandate that this problem be explored. That these laws and differences between the County and the City and in their enforcement of these codes needs to be corrected. Everybody has to have a clear understand from the get go. Thank you.”

**Chairman Winters** said, “Thank you. Commissioner Miller.”

**Commissioner Miller** said, “I do have a question. First of all, I do respect your entrepreneurial spirit and I recognize that you have invested not only your energies by your finances in a business that at this point in time is done. I need to be able to look at this as the issue that is before me, Mr. Pennington, and that is a compliance issue. If indeed you are in compliance with the County regs or County codes or if you are not and what should you do to get there and could you acquire and do those things. I need to once again qualify the question that I asked, when was Code Enforcement involved in this whole point. I got from Marvin, March of 1997. I’m hearing from you that you opened up your business March 1, 1997, but yet you continued to run that business . . . where there questions already raised, did Code Enforcement let the Penningtons known in March or shortly after and I’m looking at Marvin.”

**Mr. Krout** said, “Let me say that the general policy is that even if we find an illegal use, as long as the applicant is in good faith attempting to remedy it then County Code Enforcement won’t try to enjoin the use of that property and it is normally allowed to continue until the case is resolved.”

**Commissioner Miller** said, “So he continued. Okay.”

**Mr. Krout** said, “I don’t think he was doing anything wrong in continuing, not anything that would be out of the normal.”

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**Commissioner Miller** said, "I'm just saying that he was aware though that there was a possibility that he would not be in compliance at that time."

**Mr. Pennington** said, "The first deal was from Code Enforcement, I believe it was Rick Crowling on May 19. That was the initial contact. That was when they said that the land owner would need to reapply for a conditional use permit."

**Commissioner Miller** said, "So am I hearing a variance here of two months?"

**Mr. Krout** said, "I don't know when the first contact was made, the first formal we have was May."

**Commissioner Miller** said, "Okay, thank you."

**Chairman Winters** said, "We still have some more questions. Commissioner Hancock."

**Commissioner Hancock** said, "I still can't get the sequence of events correct in my mind. The first thing you did as an applicant was go to the Clerk's Office and fill out an application for a cereal malt beverage license, right?"

**Mr. Pennington** said, "For a drinking establishment license, yes."

**Commissioner Hancock** said, "And you did that at the Clerk's Office?"

**Mr. Pennington** said, "Yes."

**Commissioner Hancock** said, "And they in turn told you, by way of checking the boxes or by not telling you that your zoning was correct."

**Mr. Pennington** said, "I left with the impression that the zoning was correct. When I went to Topeka to obtain my State Liquor License, that was the interpretation there as well."

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**Commissioner Hancock** said, "Let me ask a question. Did it occur to anyone involved in this thing that when you are going to open up a drinking establishment, the first thing you would do is to go to Code Enforcement or make a call to Marvin's Office and say I'm going to open up a drinking establishment, am I properly zoned? It seems to me to be the first thing that anyone would do to open up any business is to find out about the zoning and not rely on the issuance of a license to determine that zoning."

**Mr. Pennington** said, "Actually, it was an actual zoning certificate. I have a copy of that, that is required by the Kansas Department of Revenue and on the top of the form it says zoning. This is the certificate that is in question, not the licenses that were obtained from that certificate."

**Commissioner Hancock** said, "That's what the Clerk sent to the Department of Revenue?"

**Mr. Pennington** said, "Yes."

**Commissioner Hancock** said, "That to me does not definitively answer what the proper zoning and use for a particular property is. I've been around quite a while and used properties and the first thing that I always would question about use of that property is it zoned and do I need a conditional use or anything else that I need before I establish . . ."

**Mr. Pennington** said, "I agree with you 100%."

**Commissioner Hancock** said, "I'm wondering did it occur to anybody to check before they made the application?"

**Mr. Pennington** said, "Absolutely. The Small Business Administration required this as well before we could even apply."

**Commissioner Hancock** said, "Require that you go to zoning and talk to them?"

**Mr. Pennington** said, "Require that we obtain the State Zoning Certificate."

**Commissioner Hancock** said, "All right. State law dictates certain things here as far as zoning and platting is concerned, I understand that. But those boys in Topeka do not know in detail what our zoning and regulations are here in Sedgwick County."

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**Mr. Pennington** said, "Correct."

**Commissioner Hancock** said, "If I ask them about proper zoning, they won't have a clue. They depend upon the County Clerk's Office to check the box off properly."

**Mr. Pennington** said, "Correct, and this certificate is completed by the County."

**Chairman Winters** said, "Thank you. Commissioner Schroeder."

**Commissioner Schroeder** said, "Question for the applicant. How much investment did you make into this?"

**Mr. Pennington** said, "Initial investment, what we've put together in the last 30 days is approximately \$77,000, inclusive of everything."

**Commissioner Schroeder** said, "Does that include your SBA loan?"

**Mr. Pennington** said, "Yes."

**Commissioner Schroeder** said, "Okay, then what's the length of the term of the loan for payback?"

**Mr. Pennington** said, "Five years."

**Commissioner Schroeder** said, "Do you have a way to pay it back?"

**Mr. Pennington** said, "No."

**Commissioner Schroeder** said, "Thank you."

**Chairman Winters** said, "Thank you sir. Continue to take public comment. Is there anyone else in the meeting room who would like to address the Board of County Commissioners on this subject? Yes sir, please come forward."

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**Mr. Lee Parker**, 420 N. Armour, said, "I represent Jim and Mary McKenney in their opposition to the proposed conditional use permit. Several years ago, the Kansas Supreme Court, in addressing zoning issues, stated that the formulation and consideration of objective criteria was necessary to keep the decision making process from being unlawful, arbitrary, and capricious. In response to the Court's ruling the Board of Sedgwick County Commissioners adopted Section 5 C8 of the Sedgwick County Zoning Regulations which delineate the eight criteria to be used in determining the appropriateness of a conditional use permit. In the time allotted, it is impossible to address all eight of the criteria, however, I would like to touch on several of the criteria used by the MAPD staff and the Park City Planning Commission and Metropolitan Area Planning Commission in unanimously recommending denial of the conditional use permit.

"First, the suitability of the subject property for the uses to which it has been restricted. The applicant has suggested that this conditional use allowing a drinking establishment is very similar to the permitted use of the property between 1975 and 1985 by the Eagle's Lodge. However, this is not substantiated by either the 1975 conditional permit use case or the location of the property. In the 1975 conditional use permit case, the property was envisioned to be used as a fraternal family establishment with a proposed swimming pool and tennis courts. A local country club was given as an example of this type of use. The location of the property also bears this out. It is back some 300 feet from Broadway, hidden by a thick stand of trees, accessible only to 69th Street, which is a neighborhood roadway running through a residential area. The building is so remote from the trafficway that the proprietors put brightly lit signs on the top of the building in an attempt to have it recognized from Broadway.

"Secondly, in combining a couple of your criteria, the zoning use and character of the neighborhood and the neighborhood opposition. Although there is the Quarter Horse Club situated on Broadway, this piece of property is some 300 feet back from Broadway and the neighborhood is bordering it on its south and east are both residential. These neighbors are the ones who attended both the meetings of the Park City Planning Commission and the Metropolitan Area Planning Commission both in person and by letter to state strongly their opposition to the granting of the conditional use permit.

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“Usually, in these type of cases, we have to only speculate what the potential harm might be. That, again, is why a conditional use permit would be granted is because of the possibility of potential harm. However, in this case, the petitioner did operate for several months without the conditional use permit and neighbors were able to cite actual harm. Being unable to sleep because of loud music played until two or three o’clock in the morning. Trash and beer bottles deposited up and down the street in their yards. Increased traffic on 69th Street by patrons after alcohol consumption constituted the public health, safety, and welfare concerns of the neighbors and their reasons for opposition.

“My clients, the McKenney’s probably have the worst of it because their front yard is less than 20 feet from the petitioner’s property. My clients are not opposed to any and every use of the property, they do, however, strongly oppose the operation of a drinking establishment in their residential neighborhood. Today, as before, the petitioner has much made much play of the fact that although an alcohol permit was improperly issued the club has been up and running. Such a fact is not a consideration under the above eight criteria that you must look at and to consider that in this case would run afoul of the old adage of two wrongs do not make a right. In summary, on behalf of my clients, the McKenneys, specifically, and the other surrounding neighbors generally, I ask that you follow the recommendation of the Metropolitan Area Planning Department and the unanimous vote of the Park City Planning Commission and the unanimous vote of the Metropolitan Area Planning Commission and deny this conditional use permit. Thank you very much.”

**Commissioner Hancock** said, “Lee, as I understand it, prior to this use and prior to this conditional permit use request their has been an issue of another conditional use request.”

**Mr. Parker** said, “Let me take you back historically. First of all, my clients, the McKenneys have been bordering on this property for 25 years. They were present in 1975 when the first conditional use came up. They went to the Valley Center meetings and those kinds of things. The Eagle came in and said this is going to be a fraternal lodge. This is going to be like a country club. We’re going to have swimming pools, we’re going to have children playing. They can come out and play tennis. In fact, in one of the staff reports they alluded to and named a country club and said if you want to drive by folks and see what it is going to look like drive by this country club and this is what it is going to look like.”

**Commissioner Hancock** said, “That was back in ‘75.”

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**Mr. Parker** said, "In '75. From '75 to '85, the Eagles operated that way. Now then quite frankly, I think that some of the confusion has come up that although this Board, the Board of County Commissioners believe that they were going to have a fraternal organization, a family organization, it turned out to be something different from that. But that is in fact and not in law what was supposed to take place out there. What was supposed to take place was going to be this fraternal family kind of operation. So it operated in some kind of a fashion up until '85. In '85 it ceased. Mr. Pennington took it over and for Mr. Pennington to be able to operate it in the school sense that he wanted to do so he came back before the Planning Commission and this body and went on ahead and asked that part of the property be zoned industrial. It was done so."

**Commissioner Hancock** said, "That was when?"

**Mr. Parker** said, "In 1985 or 1986. That was sort of amazing, but it is actually spot industrial zoning if you look at it. There is residential most all the way around it and all of a sudden you have this little track of land that is spot zoned industrial. That is what happened and it did operate as a training school for a period of time."

**Commissioner Hancock** said, "What kind of school?"

**Mr. Parker** said, "It is my understanding that they did manufacturing kinds of things. That it was for disabled children or disabled adults, I think that is right, and they learned manufacturing and actually did some manufacturing on site in learning it. It was a learning and doing kind of thing."

**Commissioner Hancock** said, "Okay."

**Mr. Parker** said, "Then, at some point thereafter, the school closed down and my client started noticing I think in March the loud music, all of the trash, all of the other kind of activity down their street. One of my clients said I work, I have to get up at four o'clock in the morning and it is real tough . . ."

**Commissioner Hancock** said, "Lee, my question was, just to cut to the chase, my question is has their been a zoning or a conditional use request in the last eight or nine years?"

**Mr. Parker** said, "In the last eight or nine years? No, there has not."



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**Commissioner Hancock** said, "Okay. Thank you."

**Chairman Winters** said, "Thank you. Thank you Mr. Parker. Is there anyone else here who would like to speak to the Board of County Commissioners on this item? Anyone else in the meeting room who would like to address the Commissioners? Mr. Rosell?"

**Mr. Rosell** said, "Thank you Mr. Chairman. I have given a copy of the document in question to the Kansas Department of Revenue, that we certify to the Kansas Department of Revenue though of course James Alford and I are responsible for what happens in that Office, this was something done by a Clerk in our Office who did call Code Enforcement and was given what at that time was standard operating procedure, given the instructions over the phone or information over the phone that the back part of this property was zoned rural residential. That is the way we did it at the time. I wanted you all to be aware of the fact that we now require written documentation for zoning. We are no longer accepting oral over the phone transmission of this information, primarily because of this particular situation. We do think we have corrected that particular problem, but we did fill out the form correctly for the State of Kansas. There is a blank line there which invites you to write in what County it was in but no box was ever checked. There is no box to check. It is clear on the form that if they had any question they should have called us from the State. It is clear on this form that a portion of this property is rural residential."

**Chairman Winters** said, "Thank you. Commissioner Hancock has a question."

**Commissioner Hancock** said, "Somebody said they checked two boxes."

**Mr. Rosell** said, "There is no box to check."

**Commissioner Hancock** said, "Who said that?"

**Mr. Euson** said, "I also said that because it was my understanding. Now I have a copy of what Mr. Rosell has given all of you and I stand corrected. There are no boxes to check and this form was filled out in accordance with the way the State asks for the information. The information is filled out correctly and I take back what I said. I don't think the Clerk made a mistake at all. The form is correct."

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**Commissioner Hancock** said, "Well, to me, I will say this. Never mind the form. This form is an application to establish and get a permit for a drinking establishment. This has, in my view, absolutely nothing to do with the determination of the proper use, according to our zoning regulations of Sedgwick County."

**Mr. Euson** said, "That is correct. It is totally irrelevant."

**Commissioner Hancock** said, "It has nothing to do with it. It is although, for the purposes of approving this, the State needs to know, in the Clerk's opinion is it properly zoned, but it certainly has nothing to do with the kind of zone and the proper use of the land."

**Mr. Euson** said, "You're correct."

**Commissioner Hancock** said, "In my view, the owner had an obligation to check with Code Enforcement and make the trip down there, went on the mat, said this is my place, here's the situation I'm in and this is what I want to do, can I do it? It is a simple question. We all do it and obviously have relied on this form to determine the proper zoning. Am I correct in assuming that? Am I making a mistake here somewhere? I don't think so but I'm open for suggestions. This is not the form to determine the zoning and use of property in Sedgwick County Kansas as far as I know. I've never gotten one of these and I've had to go through zoning several times. Am I right?"

**Mr. Krout** said, "You're right. That's not an official zoning certification. The County Code Enforcement Officer is the zoning administrator. He is the one who is supposed to write letters that say what is the proper zoning. Technically, the first portion of that . . . it is a lousy form first of all. Someone needs to contact the State and say you need to rewrite your form because it says the zoning is, well the implication is what the State wants to know is the zoning proper or not. Technically, the County Clerk filled out this information correctly. It is zoned industrial in one part and rural residential in the other part, but they didn't say whether it was correctly appropriately zoned to allow a drinking establishment. Both the applicant assumed that it meant that it was and the State assumed that it meant that it was."

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“I think the County Clerk’s Office, until this form is changed, has an obligation to tell the State through this certificate whether it is or it is not properly zoned even though this doesn’t read very well to fill out and I think they will do that in the future until this changed. It is not a good form. It must have left an implication though, the way that it was filled out, that the zoning was appropriate because on that basis both the applicant operated, SBA operated, and the State operated to issue a license.”

**Commissioner Hancock** said, “Marvin, I don’t see anyplace on this form that says front part light industrial for 285 feet, back part rural residential, where it says anywhere on that that it is proper zoning.”

**Mr. Krout** said, “It doesn’t, but obviously this is checked off as a drinking establishment and so obviously the State has developed this form supposedly to be used to get a local certification that the zoning is appropriate. As I say, it is a lousy form because it doesn’t state that in the question and the information is accurate, but it doesn’t answer that question.”

**Commissioner Hancock** said, “It says what it is but it doesn’t say whether it is correct or not.”

**Mr. Euson** said, “I think Commissioner Hancock that the form was intended to be filled out, the blank was intended to be filled out stating drinking establishment or whatever category is in the boxes at the top of the form, I think that was the intent. But none the less, the form was filled out with correction information.”

**Commissioner Gwin** said, “But Mr. Euson, I have a real problem with that because item two is completed and item two says I hereby certify that the City, Township or County of Sedgwick has no zoning laws in effect regulating the use of real property with the City, Township or County. We sure as heck do have zoning laws in effect.”

**Mr. Euson** said, “We do and perhaps you can argue, it is very arguable, perhaps better part of judgement would be to scratch that out completely, but the fact of the matter is that the form is misleading and the people who made the mistake were up at the State and not here locally. How in the world can you issue a license based upon the certification that you can put down.”

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**Commissioner Gwin** said, "You can't, it's nuts."

**Commissioner Hancock** said, "The question today is what are we going to do."

**Chairman Winters** said, "Commissioner Miller do you have additional comments?"

**Commissioner Miller** said, "Yes I would Mr. Chairman."

**Chairman Winters** said, "We're still taking public comment."

**Commissioner Miller** said, "I'll just wait."

**Chairman Winters** said, "Is there anyone else who wishes to address . . . please come forward if you wish to address the Board of County Commissioners on this Planning Commission item."

**Mr. David Franks**, 3001 East 2nd Street, Wichita, said, "I came here for the solid waste, but this is sort of irresistible."

**Chairman Winters** said, "Sir, I would hope you would limit your discussion to the facts of this particular case."

**Mr. Franks** said, "I will. We have governments to enact laws and to help people accomplish things in an organized way. It seems like the Commission and a couple of other groups of governors and the lawyer for the complainants are all holding him responsible for knowing the subtleties of the law here. I think the assumptions that have been made are reasonable since you all are arguing about what is assumable and what is not. The lawyer for the complainants wouldn't have a job if everybody knew the law like they should. I think it is very unfortunate that this guy is about to pay that much money to learn that nobody knows anything. I'm not saying whether you should approve it or not, I don't go to clubs and I'd hate to live next to one, but this is ridiculous."

**Chairman Winters** said, "Sir, do you live in that area?"

**Mr. Franks** said, "No, I don't."

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**Chairman Winters** said, “Do you have an interest in this case?”

**Mr. Franks** said, “I have an interest in seeing . . .”

**Chairman Winters** said, “No, as either the applicant or someone living in the protest area zoned in this case?”

**Mr. Franks** said, “No, I live near some bars, but I don’t live near this particular bar. I am commenting on the general situation.”

**Chairman Winters** said, “Thank you very much. Is there anyone else from the public who would like to address the Board of County Commissioners on this subject? At this time, I will close the public portion of comment and limit discussion to Commissioners and staff. Commissioners, any comments, thoughts? Commissioner Gwin.”

**Commissioner Gwin** said, “I’m prepared to make a Motion, Mr. Chairman, unless Commissioner Miller would like to do it.”

**Commissioner Miller** said, “I would like to because I’d like to be able to preface it. First of all, I would like to be able to uphold the recommendation of the Park City Planning Commission and the MAPC and that the BOCC deny the conditional use permit siting the findings that are available for us. I need to be able to get us back to point A, which is what we are actually reviewing here which is a compliance issue and whether or not if indeed this particular family does meet the requirements for a conditional use permit which is what they are requesting. I think it is very clear that according to the interpretation of what a drinking establishment is within our codes that they do not. So I am more than willing to proffer the recommended action which is uphold the two denials and call for a vote.”

### **MOTION**

Commissioner Miller moved to uphold the recommendation of the Park City Planning Commission and the Metropolitan Area Planning Commission to deny the Conditional Use Permit, citing the findings of fact provided by those boards.

Commissioner Gwin seconded the Motion.

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**Chairman Winters** said, "Commissioner Schroeder.

**Commissioner Schroeder** said, "I am probably going to support the Motion but I want to make a couple of statements. This has been a very difficult problem for the Penningtons and I feel for them and that is a lot of money for this young man to invest into a business. However, there were a couple of situations that caused this to occur and one is lack of knowledge of how the system works. There are probably three issues here. One is the State has a form that is ridiculous. But third is the person who signed this form obviously didn't understand what he was signing and I'm referring to the County Clerk and I wish that they would read it, understand what it means and says and anybody who has been any part of government or has an interest in government knows we have zoning laws in Sedgwick County. To simply sign off on this as whatever the State requires is to me, it lacks some responsibility. I wish all parties would take more responsibility for this and be a little bit more concerned about what comes out of their offices or how they work with the public in these issues. I'll probably support the Motion but I don't know what else to do at this point."

**Chairman Winters** said, "Any other questions or comments? Discussion? We have Motion which is to uphold the recommendations as presented of Park City and MAPC. Any other discussion? I see none. Madam Clerk, please call the vote."

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Thank you very much. Madam Clerk, will you call the next item."

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### **NEW BUSINESS**

#### **F. DISCUSSION REGARDING SOLID WASTE DISPOSAL OPTIONS.**

**Chairman Winters** said, "Commissioners, yesterday, if you all remember that last week we did by action of this Board ask that the City Council for the City of Wichita reconsider land adjacent to the current landfill as a possibility for landfill expansion. We asked that they respond to us. Yesterday, we did receive a letter from Mayor Knight which affirmed the City's commitment to a landfill at 85th and Greenwich Road and the letter advised that the Kingsbury land or land which is immediately adjacent to the Brooks Landfill is not suitable in the minds of the Council for development of a landfill. So the question today is Commissioners, do we want to act on this letter today and discuss this? Commissioner Gwin."

**Commissioner Gwin** said, "Yes, Mr. Chairman, I would like to discuss it today. I think we stated last week that we would act quickly upon receipt of the City of Wichita's answer and I think we certainly are obliged to do that. In the last couple of days, I have received a statement that I think is kind of interesting to read into the record and for consideration. As you know, my opinions have not changed. I still support a transfer station as the best way to dispose of trash in the interim while we continue to look for high tech methods of disposing of it. In the argument for a local landfill, there have been those who stated that it is going to be a much more state of the art landfill that we are going to have liners and those kinds of things to protect our environment. This statement relates to that. It says, 'True, the landfill unlike Brooks would have a state of the art liner, but it is madness to risk that the liner might someday spring a leak and pollute the water supply of a region that already has too little water.' Then it goes on and talks about potential litigation if a landfill is sited at site. It says that the City's plan could be held up for years pending the outcoming of the suit, meaning law suit. Good. It means that the City residents have to pay more, much more, to have their trash hauled to some distant venue for disposal so be it. Maybe then Wichitans will start recycling and other waste reduction strategies seriously. Ladies and gentleman, that came from a 1995 editorial from the Wichita Eagle. It is amazing to me that in two short years they could change their opinion from a transfer station makes sense even if we have to pay more because it forces us to do the right thing and recycle, to complete and utter support of the City of Wichita's current plan, which is as flawed as their argument as a site at Brooks or Kingsbury. The site at Furley is as flawed as that."

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“This editorial was quite rightly written in opposition to expanding Brooks, the same thing holds true when you talk about siting a landfill anywhere in this County. So it is amazing to me that they can change their opinion so quickly when all along we know what is important in this community. We know that protecting our groundwater is of vital importance and I don’t care whether it is the groundwater by the Arkansas River or whether it is the groundwater near Furley or whether it is the groundwater near Clearwater. It is too precious a commodity for us to risk when there are better environmental sites in this State to handle this in the interim. I am still supporting a transfer station and when discussion is done I am prepared to make a Motion to do so. Thank you.”

**Chairman Winters** said, “All right. Do you have any other questions at this time?”

**Commissioner Gwin** said, “No sir, I don’t.”

**Commissioner Schroeder** said, “I just want to restate my position as I did a week ago on this issue. The reason, I guess I made the Motion, but the reason I supported my own Motion was it was multi-fold. One is that business was telling me that they needed some assistance in this because of the cost that would be passed on to them with a more expensive process of getting rid of waste. I thought if we gave the City of Wichita an opportunity to use the extension of Brooks, which is Kingsbury, for a five or ten year period, one that would give small business or business an opportunity to look at ways of disposing their trash, catching up with the system if you will. One, it would give the Solid Waste Committee and the City and the County time to look at the recycling process and how to go us into that process, ease us into that process. It would also allow the City of Wichita to look at financing of the closure of Brooks. I understand that is a very expensive process. It is costly. I understand the reason they want another landfill is because they need the revenues produced by that landfill in order to close Brooks, that is a problem. That is why I thought that ten year period would give them a chance to financially develop that solution, put money aside, build it into their budget so they could close it. They chose not to go that route. I understand their concerns are based upon the geology of the Furley area in comparison with the Brooks area. Sure there is a difference. But I think it is such a minute difference. When you get within ten feet of groundwater in either area I think the risk is just as equal. I don’t perceive that as being a full scale fail safe by going to Furley.



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“If you do a Subtitle D landfill, it should work the same out east as it would out west or as it would north or south. It doesn’t matter where it is, it is a title D landfill. I just thought there would be an opportunity to help older Americans who I was getting phone calls from about the cost of their trash service going up, small business concerned about what it is going to do to business, the City of Wichita concerned about the budgeting for the closure of Brooks. So I thought that we could do some good things by allowing them to make that decision but apparently they chose not to use the Kingsbury site and prefer that we reconsider, which we did eight days ago, the Furley site. I don’t think anything has changed in the last week. We have all the documentation that they have given us. I thought we gave the community a good opportunity to look at all options and that the use of Kingsbury would be, in my estimation, a stop gap measure so that we would try to accomplish these things that I just referred to a moment ago.

“Today I am going to support a Motion which I think we will have to go with a transfer station concept. I am not in favor of opening up another landfill in Sedgwick County and I sure don’t see the extension of Brooks as opening another landfill. It is simply an extension of Brooks into the Kingsbury site. That is how I view it. It’s been there for 30 years. I don’t know how the decision was made exactly of not using the Brooks extension. I don’t know if they had all those geology reports that they have now regarding Brooks and Kingsbury and Furley. Obviously, a couple of years ago, somebody made the decision not to expand the Brooks Landfill and I have no idea what that was based on other than neighborhood opposition. Ours is not based upon neighborhood opposition solely. It is based upon a lot of factors, some of which I just gave you, others which concern the environment, protection of groundwater, the protection of property values in that area, et cetera. As you can see in the Kingsbury area, the Moorings continues to build. It continues to expand. Values are very very strong even with the landfill in that location. So I just thought if the City wanted a landfill, if they needed the revenue to close Brooks, there was their opportunity to get it, it was already there in place. They’d already bought the land. I don’t now what circumstances surrounded the purchase of that land. I think we have done a good community service in my estimation by allowing this discussion to go back to the City for reconsideration of the Kingsbury site. I’ve made every effort that I possibly can to give them those options and I stand firm behind the concept of a transfer station. If you ask me to weight Furley against Kingsbury, I know the geology is different, but the actual difference between a subtitle D landfill in Furley compared to Kingsbury, the difference is very minimal in my view. I will not open another landfill in Sedgwick County because I think it environmentally not the right thing to do.”

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**Chairman Winters** said, "Thank you. Commissioner Miller."

**Commissioner Miller** said, "Thank you Mr. Chairman. Once again for the public and for the media, you will hear five individuals give five stances and will ultimately come solidly behind a transfer station and this should not be a surprise. I need to be able to reiterate why I also supported the Motion that was made on Wednesday of asking the City to reconsider the Kingsbury site and to affirmatively state that I will not support and I will not site another new landfill in Sedgwick County. I refuse to be able to watch silently the City of Wichita pursue aggressively a site that is obviously not the best from an environmental stance but also from a regional perspective is not the best thing to do for Sedgwick County.

"I do believe that the City of Wichita has every intention of making this site, Furley, a regional landfill site. That is one reason why it is that I felt that it was a better thing to do to ask the City of Wichita to reconsider a current site that was already proposed for an expansion and that is the Kingsbury tract. It was simply protocol for Sedgwick County to ask the City to do this. It was not indecision amongst this body, that did not cause us to do it. It was simply protocol because it was property owned by the City. They did indeed respond to our request and on yesterday's agenda item they chose to unanimously deny it once again.

"I feel that is unfortunate on one hand but a win on the other, because we were actually able to attempt to give all County residents another option, a possibly viable option, to make a local landfill work for a short period of time. At the Kingsbury site, I felt that by opening it for the shortened period of time, and I think it was a ten year window put in place on it and I felt that we could legally do that, financially there was a question from the City's perspective. But in opening it for a short period of time, to me that would have given Sedgwick County that aggressive push to look at what I call technological long term solutions and to put them in place. If they indeed did not occur, and you'll probably hear this from Commissioner Hancock, because he did talk about it at last weeks meeting. If those alternatives did not occur, then we would transist into a transfer station option or mode for waste management here.

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“So it is my default position to move to a transfer station. It would have been the mode that if indeed the Kingsbury site would have been favorably considered would have actually been utilized and then we would have aggressively looked at some of the technological ways of dealing with our solid waste. That, if indeed those did not follow through as quickly, I would have had no problem in going in that direction anyway. So being able to solidify with the rest of the Commission behind the transfer station to me, I’ve stated before, is a default position. I feel that it will work for us. I don’t feel that it is necessarily the long term solution. I refuse to see a regional landfill sited here and that is what I feel is the intent of the City of Wichita in terms of Furley. Thank you.”

**Chairman Winters** said, “Thank you. Commissioner Hancock.”

**Commissioner Hancock** said, “Thank you Mr. Chairman. For the folks who are here to hear this, thank you for being here. This has been an interesting issue for me. I was thinking last night what to compare it to and it finally dawned on me that this whole issue kind of reminds me of the institution of marriage. I know yesterday the Mayor was right and he said, ‘This isn’t brain surgery, this isn’t rocket science.’ He’s right, it isn’t. Like marriage, just about anybody gets into it, some of us do it better than others, but everybody does it in every city and every county in the United States, well they have to face this issue one way or another. It has been very difficult. I’ve had friends who aren’t too bright that got married so it really is very easy to do. None of us marry the same girl and most of us don’t want to marry the same girl. Like a community, we have choices. The community has spoken, all the way from incineration to site a local landfill, we’ve all had our different preferences. In one way or another, to various degrees of success, they all would work, but we may not be happy. That’s the key, all of us want to be married a long time. Nobody wants a divorce.

“Recently, the City had a divorce. They decided they didn’t want to have a landfill at Brooks anymore so they decided to move on. Quite frankly, it has been very hard on the children. Last week, we voted to try to attempt reconciliation but yesterday the City Council decided that they had irreconcilable differences and they are going to part ways with the Brooks and the Kingsbury area.

“I tried to look for my answer to the future. I know 20 or 30 years from now, if I were to go out to the Furley area, I would see a mound of dirt covered trash and hopefully there would be grass on it and I’d have to ask myself why I did that, especially when I had options. Why did I destroy a piece of ground?”

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“Why did I destroy an area around that piece of ground when I had options? It is a difficult question for me to answer and in many ways though it is an easy one to answer. I don’t want to leave another landfill site in this community as a legacy. There are better places geologically and they are far superior in their capacity and their safety to handle solid waste. It seems to me that it may make very good sense right now to locate a landfill here in Sedgwick County, but it also seems to me that if you look to the future, 20 or 30 years from now, it won’t look quite as bright and shiny as it does now. I think that we’ll wonder why we did it and I think we’ll ask our questions to ourselves why we did that when in fact we had other options.

“I hoped to use the Kingsbury site on a short term to make a smooth transition from a local landfill type of disposing of our solid waste to the transfer system. I hoped not to make business suffer. I hoped to not make individual residences suffer with increased cost. I truly believe though that because other communities are doing it and because other communities have made it a success, I think the anxiousness, the anxiety created by those who say that we can’t afford a transfer station, I think that those anxieties and anxious moments will be put to rest. Other communities are doing it folks. As I said, the Mayor said this isn’t rocket science. There are hundreds if not thousands of municipalities already transferring their trash out of the area. There are hundreds of counties already doing the same thing. I don’t read reports, I don’t see reports where their economies are so adversely affected that they will be going out of business very soon. No one knows the exact cost. We can get very close in our estimations. The City has gotten very close and so have we. We have disagreed on those costs from time to time but that is due primarily to the differences that are inherent in this decision making process. We’ve used consultants and so have they and the consultants themselves have disagreed. It is not hard to understand why we end up arguing about the numbers.

“I promised the business community that I would vote for a landfill last week and I did. I even promised Greg Ferris that I would vote for a landfill last week, and I did. But I, in my heart of hearts, in my deepest wonderings about myself and the future of this community, can I possibly site another landfill here in Sedgwick County when there are better places to do it. I can’t look out there and destroyed that property when I have an option to help make property better someplace else and that’s what they are doing with it. Today, I will vote to implement the concept transfer stations. In so doing, I want to say this, it seems to me the best answer for me. What I want to choose is an out of County site based upon the geology and the ability of the landfill operator to meet all our requirements.

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“Two, I want to institute a vigorous system of recycling where it is economically feasible or advantageous to recycle. I want to limit the material going to the landfills with an establishment of a CND landfill the elimination of grass and leaves as well as other materials that do not need land filling. I do not want to begin the discussion of a transfer station with the concept of only one transfer station. I envision a system of smaller stations situated around the area that are both convenient for the haulers and the individuals. That is something that we forget. Individuals use transfer stations also. They can bring their stuff they pull out of their garage on Saturday morning and go to a transfer station and even sort it out and recycle it right there on the spot. From this point forward I think we need to recognize what is needed by members of the solid waste industry. Certain understandings will help lower the cost in the future. Keep the independent haulers in mind as well as large haulers and it will be important for us to listen and learn as well from them. Recognize the work of the Solid Waste Planning Committee and adhere to most of those plans as close as possible. The Committee has a statutory responsibility and it has been my observation that they take their work very seriously. The City Council will need to cooperate with the planning authority and it is my view that the purchase of the land in northeast Sedgwick County by the City for a landfill has caused the Council to focus on making that investment work rather than understanding the Planning Committee’s recommendations to take action to serve the citizens in a new way. It is difficult for me to understand how the City Council expects our solid waste system to improve when they have chosen to continue down the same old path they have for the last 30 or 40 years.

“Last of all, focus on a preferred future. Learn new technology and be willing, as a community, to make the investment in that new future and new technology and rid ourselves of the need to use large landfills. We’ll never get there if we don’t take this single one small step now. The City has tried in the past to provide the best answer that it possibly can for solid waste. The Council truly believes in a local landfill. I challenge the clarity of that view and hope that in the future they will join us to work with us to benefit our community. I hope our marriage goes on for a long long time. Thank you Mr. Chairman.”

**Chairman Winters** said, “Thank you. Commissioner Gwin.”

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**Commissioner Gwin** said, “Thank you Mr. Chairman. Mr. Buchanan, can you answer some questions for me? Commissioner Hancock brought up the issue of cost projections and those kinds of things. It seems to me yesterday that in some of the discussion our staff was really impugned rather severely as to the kinds of numbers that were produced and how that came to be. Can you help me understand the information cost projections, how we came to them, did we meet with City staff, was that information given to the community, so on and so forth? Help me with that a little bit.”

**Mr. Buchanan** said, “The initial discussion regarding transfer stations, the City did a request for proposal and received bids on those transfer stations. We took those numbers from the bids for a transfer station and used those numbers for the basis of our cost for a transfer station. We did adjust that. There was a land cost that was not realistic, something about \$260,000 an acre, so we adjusted down for a more realistic land cost.”

**Commissioner Gwin** said, “They had priced a piece of land, 20 acres of land at \$260,000 an acre?”

**Mr. Buchanan** said, “But we adjusted that and we discovered that and worked with the City and ran those numbers past our consultants and ran those numbers past City staff and got marks back that said these are reasonable numbers. These are a range, we don’t come to the exact same cent, but this is the range in which we can live. Several of those meetings occurred. The other cost comparison was landfill costs. We used a Burns and McDonald 1996 study. Their study in 1996 and said what would be the cost to build and develop a landfill. We use those and used the actual numbers of land purchased by the City. So we adjusted the Burns and McDonald number by using the actual cost of the land at the Furley site. Again, crunched those numbers, talked to our consultants, talked to City staff, and got what we believe was an affirmative response. No one said this is awful, this is terrible, this is bad, this is out of line. We didn’t look at the new big for the new information at the Furley site. That came in the last couple of weeks and that was just announced and so that information was not given and used by the Solid Waste Committee. That is about a two dollar a ton difference, it is a little lower. But in those costs, there are no land costs in the Furley site. They started the development of that. Again, the difference of two dollars at that point between their numbers in 1996 and their numbers in 1997 are not significant, they are still within the range.

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“We did, several weeks ago, I stood at that podium and talked about the double liner and a cost of a double liner. That information was wrong, it was in error. The information that I presented to you was not right. We discovered that. Councilman Ferris pointed that out to me soon after the meeting was over. We rechecked our numbers and before the day was out we had faxed everyone we knew who had a vested interest in knowing that information, including the City, you, and members of the press to correct that mistake. That was one number, a solution that we’re not talking about at all. So in fact we made a mistake, we corrected it, we fixed it, we moved on. Surely, that is not what they are talking about because the issue is what is the range of numbers between landfills and transfer stations. We’ve not heard, we’ve talked to the City staff, we’ve talked to our consultant, we’ve based our information on their numbers.”

**Commissioner Gwin** said, “Thank you. I appreciate that clarification and the opportunity to try to defend our staff who I think have unfairly been beaten up for their hard work. Thank you Mr. Chairman.”

**Chairman Winters** said, “Thank you. Commissioner Schroeder.”

**Commissioner Schroeder** said, “Betsy asked one of the questions I was concerned about and that was the issue of our numbers and how solid we are on them, but I’m hearing we’re pretty confident on those numbers. The other is and I need to say this that Councilman Ferris did come to our meeting last Wednesday and I appreciate him being here. I think that was important because he delivered the message to the City Council on our motion and I think he did make an attempt to address the City Council of our concerns and what we proposed and I appreciate that. To me that represents some attempt of cooperation which we were trying to accomplish. Though we may disagree, it is not an all out battle. Commissioner Hancock used the example of a marriage, which was very descriptive and pretty well said it out. I think this is just a disagreement based upon a couple of things. One is what we think is right for the environment and the other is based up financial considerations. More over for the City, they have to be more concerned about financial considerations because they are the ones who have to close the Brook Landfill at this point in time. I just wanted to make that comment and as Councilman Ferris said, when I ran the first time I had five people who didn’t like me and now I’ve got thousands. It is a thankless job. He is doing what his Council wants him to do. He was a spokesman for the Council.

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“Whether it was smart for Greg to take this one on I don’t know but he did and I just wanted to thank Greg for taking the time to come over here and express their concerns to us and then taking our concerns back across the street to the City Council. Though we did not come in with any agreement, at least we all know where we are at in this situation and hopefully, as Betsy said yesterday in her interview, that we can work with one another and go on down the road and do what is right for Sedgwick County.”

**Chairman Winters** said, “Thank you. Well, I’d like to bring my thoughts to a conclusion and I think most of you already know, because I have made several statements both last week and in letters in the newspaper. I again come back to this headline that goes back to 1987 which was in the editorial page of the Wichita Eagle talking about landfills are the dinosaurs of disposal and a better way must be found. I think to really make this change over and to make this change is going to be difficult because the concept of changing a system, changing a methodology is not easy. It is going to meet a lot of resistance, but the Solid Waste Management Committee has been our group that has been at the point of trying to determine is it time in this community to make a change. I want to go back for just a moment and talk about the journey that I’ve been through and how I got to where I am.

“I started out in 1993 as a supporter of the Kingsbury or expanding the Brooks Landfill, saw the resistance to that and came very concerned that what was going to be the options, are there options out there. So I studied the Kingsbury site a great deal, became convinced in conversations with Mayor Knight that it was not the place. Then I heard Bill Cather talk about a site ten or fifteen miles down K-42 highway. Well, this is the area that I grew up in rural Sedgwick County. I know this country. I know that the Ninnescah River is not far from that site. I know what the groundwater is like in that area from just having lived there and talking to farmers and been there. I knew that was not a good site. So again I just redoubled my efforts to try to look at these workable options. So then Clearwater is off the map and then Furley is on the map. I just couldn’t in good conscience say well, I don’t like Kingsbury, I don’t like Clearwater, now somehow I love Furley. That just didn’t make sense. I continued to try to find out as much as I could about Furley. I tried to read the reports. I tried to read the City’s report that they have put out that talks about the geology of this area. Clearly it says that they’ve done borings up there that give no indication of instability, but they go on to say that water losses during drilling and the indication of possible occurrences of subsurface voids at a nearby site raise concerns. They can say that we’re just listening to residents up there talking about water problems. I think they recognize that there are some issues that need to be address.



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“For the reasons of geology and environment, I am going to continue to say that what we are doing here is a transfer system with aggressive recycling coupled to it. I think that this is going to force us into a position to look at recycling options that will work. I think it is going to be a flexible system that will allow us to prepare for new technology. I think we need to remember that the City’s option at Furley was not going to be a cheap option. We’re talking \$150,000,000 to \$180,000,000 so that is a pretty expensive option. I’m just going to say that for me it is time to really lean on landfills or the dinosaurs of solid waste disposal, it is time to find a better way. I’m going to try to work to see that this County community can come to grips with trying to solve this problem and today I think the transfer system with aggressive recycling is the way to meet the challenge.”

**Commissioner Gwin** said, “Mr. Chairman, I don’t know if there are any more comments but I’d make a Motion. This is lengthy and I had assistance in preparing it so I could make sure we got all the statutes annotated and all that mentioned throughout this so bear with me.”

### **MOTION**

Commissioner Gwin moved that Sedgwick County’s Solid Waste Management Plan shall designate transfer stations to the final disposal method utilized in Sedgwick County’s solid waste management system pursuant to the recommendation of The Sedgwick County Solid Waste Management committee, and hereby direct staff to prepare an addendum to the Sedgwick County Solid Waste Plan reflecting this decision and any additional information required by the Kansas Department of Health and Environment in their letter of March 28, 1997, K.S.A. 65-3405, and administrative regulation 28-29-80.

I make this motion for the following reasons:

1. A transfer station is consistent with the needs and plans of the whole county, and will provide for solid waste disposal in a manner which will not contribute to pollution of the waters or air of the state;

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2. A transfer station will conform with the existing comprehensive plan, population trend projections, engineering, economic, demographic, geographic, and environmental factors specific to Sedgwick County as a whole, as more fully set forth in the Sedgwick County Solid Waste Plan; and
3. A transfer station will be an effective component of an entire solid waste management system encouraging the wise use of resources through development of strategies that reduce, reuse and recycle materials, while providing the greatest flexibility to seriously pursue new waste disposal technologies for the future.

Commissioner Hancock seconded the Motion.

**Chairman Winters** said, "Commissioner Hancock."

**Commissioner Hancock** said, "Thank you. I think all of us got the same message this morning and I think it is important to make this clear. Today we are, and this is from Alison McKenney Brown, this is talking about regulations that we need to follow and things we need to do. I think it is important that the public understand what the next part of our mission is. Now that we've identified and selected the final solid waste management system, that we've just begun. We also need to provide a schedule for the implementation entire Solid Waste Management System. We need to provide an estimate of costs of the selected final Solid Waste Disposal System and the proposed method of financing that system. Also, we need to choose sites where each portion of the Solid Waste Management System is to be planned and available for the next ten years. So I wanted to make it clear that these are requirements by the Kansas Department of Health and Environment and that is our next step. That is where we will be going to now and the time that we are done."

**Chairman Winters** said, "Thank you. Before we take a vote on this Motion and if I hear correctly, I think we are going to have a Motion that is about five to zero here. I'd like to make a couple of other quick comments. As we proceed in this process I had the privilege for a short time of serving as a Commissioners with former Senator Billy McCray, who was a County Commissioner for a number of years. One of the things Mr. McCrae taught me is that you debate the issue, you discuss it from all sides, then you take the vote."

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“The vote goes one way or the other but as soon as it goes that way then you put your efforts into making the system work. So I really hope that we can continue to work with two groups in particular, one is the City Council and the Mayor. I hope we can continue to deal with them. They are doing many good things in this community for recycling. They are supporting the drop off boxes at the Dillons stores. I hope that through their tipping fees they continue to do that process. They are aggressively working on household hazardous waste problems. That is very important for Brooks Landfill as it continues on in its life. They are involved in education efforts. I hope we can continue to work with them in a very strong and close relationship. The other folks that I think we need to work to is the private side. I think we very definitely need to visit with the haulers in this community. We need to work systems that will assure them that there will be in place an operation that will fit their needs. They have many diverse needs from the very large to the smallest one truck operator. I think we need to really work intensely with this group. As I have always said, there is a lot of free market at play in this whole system. As much as we can involved the market system and business and industry into looking at this future, I want us to certainly concentrate on that. I hope again that we can continue to work with the City in trying to make a plan that will move forward. Commissioner Gwin.”

**Commissioner Gwin** said, “Just to echo what you said. I think it was quoted in the paper and in the interview last night. I think it is of the utmost importance that we have the support of the City of Wichita to try to make these next steps successful. It is in the best interest of all the citizens of Sedgwick County for this to work and for this to be successful. We will need their help in assuring that. I hope we can count on that.”

**Chairman Winters** said, “Thank you. Commissioner Hancock.”

**Commissioner Hancock** said, “Thank you. Mr. Chairman, I just wanted to echo what you said. It is very important that those words that you said be the last ones because I want everyone to remember them. They are very important words for the industry itself and the City of Wichita, they need to not only be supporters, they need to be players in this. They need to be there to make this as successful as possible for the citizens they represent. I’ve got to tell you, I’ve got to admire the City. They had a point of view, they expressed it, then they went to fight for it. That’s the kind of thing that made this County and this City a great County and a great City. We may disagree and we win one and they win won, but in the end, those wins generally amount to the best answer possible. I’m really proud to be a member of this County and proud to work with the City, they are fine folks.”

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**Chairman Winters** said, "We have a Motion on the floor, which basically asks that we proceed on with the Solid Waste Management Committee and recommend the final disposal option of a transfer system. Is there any other discussion? Seeing none, Madam Clerk please call the vote."

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "We've been here an hour and twenty minutes, I suggest we take a ten minute break. We're going to be in recess for ten minutes."

**The Board of Sedgwick County Commissioners recessed at 11:18 a.m. and returned at 11:33 a.m.**

**Chairman Winters** said, "We've been in recess. Madam Clerk, would you please call Item G?"

**G. RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NUMBER 83-1997, WHICH CREATED A LATERAL SEWER DISTRICT WITHIN SEDGWICK COUNTY, KANSAS AND AUTHORIZING IMPROVEMENTS THEREIN (ROCKY CREEK ADDITION).**

**Mr. Joe L. Norton**, Bond Counsel, Gilmore & Bell, P.C., greeted the Commissioners and said, "This item relates to an amendment to action taken in April of this year wherein after a public hearing the Board of County Commissioners established a sewer district within the northeast portion of Sedgwick County known as the Rocky Creek Addition. You may recall last week we authorized some street improvements within this area."

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**SLIDE PRESENTATION**

“Before you on the screen is a map depicting the general area of the Rocky Creek Addition, which is located north and east of the intersection of 13th Street North and 127th Street East. This project was authorized in a variety of phases, I believe a total of seven. Before you on the screen is a map depicting the various colors representing different phases of construction for the benefit district. Since that project was authorized in April, construction of Phase 1 has occurred and bids have been received for Phase 2. The bids on Phase 2 are slightly in excess of costs that was estimated at the time the project was authorized and the owners of 100% of the property have requested that the Resolution be modified to authorize the increased costs and that they have also wanted to shift certain properties that were in Phase 4 into Phase 3 and advance some of the construction so that the boundaries of the various phases are requested to be modified slightly.

“On the screen before you now is the Bureau of Public Services estimate of cost of these improvements. The only changes to the original one are in Phases 2, 3, and 4. Phase 2 costs are increased from approximately \$310,000 to \$405,000. The Phase 3 and Phase 4 costs, Phase 3 goes up slightly and Phase 4 goes down because we are shifting what was 49 parcels in Phase 3 into 62 and reducing Phase 4 from 47 parcels to 34. Otherwise, the end result numbers and principal costs per lot have not been modified significantly. Phases 5, 6, and 7 costs on the screen before you have not changed from where they were in April. We may in fact need to look at this as the project proceeds. We estimate that these phases will not be constructed for some time and those project costs may need to be adjusted at that time.

“We have prepared a Resolution for your consideration which would accept the petition requesting the changes and authorize the improvements to proceed at the modified costs and modified phasing. No public is required by statutes since the boundaries of the district have not changed at all since the hearing you had in April.”

**Chairman Winters** said, “Commissioners, you have heard the report of Mr. Norton.”

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**MOTION**

Commissioner Gwin moved to adopt the Resolution.

Commissioner Hancock seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Thank you Mr. Norton. Next item."

**H. BUREAU OF COMPREHENSIVE COMMUNITY CARE.**

**1. AGREEMENT WITH BREAKTHROUGH CLUB OF SEDGWICK COUNTY, KANSAS TO PROVIDE PSYCHOSOCIAL REHABILITATION AND RELATED SERVICES FOR ADULTS AND YOUNG ADULTS.**

**Ms. Deborah Donaldson**, Director, COMCARE, greeted the Commissioners and said, "This particular Contract includes quite an array of services that Breakthrough Club does provide for our consumers. That includes the young adults that often were kind of fell through the cracks and we now do have services for them that we found to be very productive. I would recommend approval of the Contract."

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**MOTION**

Commissioner Schroeder moved to approve the Agreement and authorize the Chairman to sign.

Commissioner Gwin seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item."

**2. AGREEMENTS (THREE) PROVIDING DEVELOPMENTAL DISABILITIES COMMUNITY SERVICE PROVIDER STATUS.**

- **THE INDEPENDENT LIVING CENTER OF SOUTHCENTRAL KANSAS, INC.**
- **CEREBRAL PALSY RESEARCH FOUNDATION OF KANSAS, INC.**
- **LIFE CHOICES RES-CARE KANSAS**

**Ms. Donaldson** said, "Commissioners, these are our standard service provider agreements with individuals who have meet the criteria for that designation which does make them eligible for funds for providing these services. I'd be glad to answer any questions and would recommend your approval."

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**Chairman Winters** said, "Thank you. Commissioners, you've heard the report, what's the will of the Board?"

**MOTION**

Commissioner Hancock moved to approve the Agreements and authorize the Chairman to sign.

Commissioner Schroeder seconded the Motion.

**Chairman Winters** said, "Commissioner Miller."

**Commissioner Miller** said, "I just need to hear once again Debbie, what do we do, do we go out and are there criteria that these individuals need to meet in order to get this status?"

**Ms. Donaldson** said, "Yes, they have to be eligible for licensure through the State as a developmental disability organization and really present some information to us showing their viability and commitment to quality services. They often will go through several phases with us in terms of status until they get to a provider status, but we will take them through that process. We monitor it and it does go through the advisory board which you have appointed and they approve these before they are ever brought to the County Commission."

**Commissioner Miller** said, "Very good, than you. Thank you Mr. Chairman."

**Chairman Winters** said, "Any other questions or discussion? Seeing none, call the vote."

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item."



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**3. ADDITION OF ONE ADMINISTRATIVE ASSISTANT, RANGE 18, AND TWO FIELD CASE MANAGERS, RANGE 16, ALL GRANT-FUNDED, TO THE COMCARE STAFFING TABLE.**

**Ms. Donaldson** said, "Commissioners, these three positions go into the Community Developmental Disability, the organization which is now I believe close to being really fully funded by the State and so we will have the positions we need to do our job of monitoring. The positions will really act as one as the quality assurance assistant and will be working with our quality assurance coordinator and the other two will be community service liaisons who work in such areas as determining eligibility. I'd be glad to answer any questions."

**MOTION**

Commissioner Schroeder moved to approve the additions to the COMCARE Staffing Table.

Commissioner Miller seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Thank you. Next item."

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**I. DEPARTMENT ON AGING.**

**1. APPLICATION AND AGREEMENT AMENDMENT FOR THE INCOME ELIGIBLE PROGRAM.**

**Mr. Doug Russell**, Director, Department on Aging, greeted the Commissioners and said, "This is one of those good news things you get from the State. We transferred the Income Eligible Program from SRS a couple of months ago and frankly complained state wide that we felt a little shorted on administration. KDOA, after they got done looking over their funding, were able to provide some more and this Amendment gives us an additional \$29,250 that we plan to use to fund some additional case management assistance. I'm asking for your approval."

**MOTION**

Commissioner Schroeder moved to approve the Application and authorize the Chairman to sign.

Commissioner Gwin seconded the Motion.

**Commissioner Miller** said, "All you had to do was ask?"

**Mr. Russell** said, "It was a little tougher than that."

**Chairman Winters** said, "I'll bet. Any other discussion? Please call the vote."

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item."

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**2. CONTRACTS (12) FOR SENIOR CARE ACT/MILL LEVY FUNDED SERVICES FOR 1998.**

- **HOME HEALTHCARE SERVICES**
- **LIFELINE**
- **MT. HOPE HOME HEALTH SERVICES**
- **VIA CHRISTI-PRIVATE DUTY**
- **SENIOR SERVICES, INC.**
- **ST. JOSEPH'S ADULT DAY CARE**
- **DEPENDABLE HOME HEALTH CARE**
- **SAINT RAPHAEL HOME CARE**
- **CRAIG HOMECARE**
- **HOSPICE**
- **CHERRY CREEK VILLAGE**
- **CATHOLIC CHARITIES ADULT DAY CARE**

**Mr. Russell** said, "Commissioners, these contracts are in conformance with the Senior Care Act Application that you and the other two County Commissions approved last June. Basically, they are market rate contracts where we are in a third year option to provide in-home services. The items that they purchase are homemaker services, assistance with bathing, helping folks get out of bed, get dressed, clean up a little bit, do a meal, to keep them where they live in home so they don't have to go to a nursing home when they don't need to.

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“It is a share cost program where the client pays about 20 cents on the dollar so they help own the quality of what they get. We’ve gone over the last five years from a single vendor to twelve here and three County wide that do this, so the customer choice is tremendous.”

**Chairman Winters** said, “Would you read these 12 vendors into the record Doug?”

**Mr. Russell** said, “I apologize sir. It is Home Healthcare Services, Lifeline, Mt. Hope Home Health Services, Via Christi-Private Duty, Senior Services, Inc., St. Joseph’s Adult Day Care, Dependable Home Heath Care, Saint Raphael Home Care, Craig Homecare, Hospice, Cherry Creek Village, and Catholic Charities Adult Day Care.”

**Chairman Winters** said, “And the principle purpose here is keeping seniors out of nursing homes and nursing centers and keeping them in their own homes.”

**Mr. Russell** said, “That’s correct. When they are too frail to do it all themselves this really does the rest of the trick.”

**Chairman Winters** said, “Okay.”

**MOTION**

Commissioner Schroeder moved to approve the Contracts and authorize the Chairman to sign.

Commissioner Hancock seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

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**Chairman Winters** said, "Next item."

**3. ADDITION OF ONE GRANT-FUNDED ASSISTANT CASE  
MANAGER, RANGE 13, TO THE DEPARTMENT ON AGING  
STAFFING TABLE.**

**Mr. Russell** said, "Simply stated Commissioners, this spends the money you approved under Item 1, and I'm asking for your approval to add this position to your staffing table."

**MOTION**

Commissioner Gwin moved to approve the addition to the Department on Aging Staffing Table.

Commissioner Miller seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Thank you very much Doug."

**Mr. Russell** said, "Thank you Commissioners."

**Chairman Winters** said, "Next item."

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**J. AGREEMENT WITH DAVID CRAIG & CO. TO DEVELOP A CAPITALIZATION RATE STUDY TO ASSIST THE APPRAISER'S OFFICE IN VALUING INCOME-PRODUCING PROPERTIES FOR AD-VALOREM TAX PURPOSES.**

**Ms. Delia Lopez**, Chief Deputy Appraiser, County Appraiser's Office, greeted the Commissioners and said, "We recommend approval of this Agreement. It is a cap rate study to follow up what we did in '95 with the income producing properties to use for appraisal purposes."

**MOTION**

Commissioner Schroeder moved to approve the Agreement and authorize the Chairman to sign.

Commissioner Miller seconded the Motion.

**Chairman Winters** said, "Commissioner Gwin."

**Commissioner Gwin** said, "I'm certainly going to support it Delia, but one of the nice things about the previous study was that some of the disagreements or arguments we had with the owners of income producing property were diminished because we had some real numbers on which we could rely. I'm glad to know we are keeping it up to date. This information is important not only to the Appraiser's Office but to the property owners in Sedgwick County as well."

**Ms. Lopez** said, "That's truly correct and I believe in '95 we also did it in partnership with some of the smaller counties."

**Commissioner Gwin** said, "Great."

**Commissioner Hancock** said, "I think some of the arguments in the past have been mainly around the cap rate. This has surely made our lives simpler in the last couple of years."

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**Chairman Winters** said, "I guess then to follow up too, David Craig is apparently is one of the authorities in the State of Kansas and has done a lot of work in Johnson County, is that correct?"

**Ms. Lopez** said, "That is correct. He is one of the experts in cap rate studies."

**Chairman Winters** said, "In those cases where we end up before BOTA or before District Court, the validity of David Craig . . ."

**Commissioner Miller** said, "Carries a lot of weight."

**Commissioner Gwin** said, "But in the end, the real goal here is that we get the right values assigned to property and that is the bottom line. That is exactly what we want to get done."

**Chairman Winters** said, "But with capitalization rates that are prepared by experts, you have the ability to do that."

**Ms. Lopez** said, "That's correct."

**Chairman Winters** said, "All right, we have a Motion and a second. Any additional discussion? Seeing none, call the vote."

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item."

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**K. AGREEMENT WITH WICHITA AREA CHAMBER OF COMMERCE TO PROVIDE ECONOMIC DEVELOPMENT SERVICES.**

**Ms. Irene Hart**, Director, Bureau of Community Development, greeted the Commissioners and said, "This Agreement continues specific business expansion and retention activities and work force development activities through 1997. I'd be happy to answer any questions you might have."

**Commissioner Schroeder** said, "Is this a one year Agreement?"

**Ms. Hart** said, "It expires at the end of '97."

**Commissioner Schroeder** said, "It expires the end of this year. This is using what we have this year and then next year we are going to wait and see what comes out of the sky."

**Ms. Hart** said, "We're working on that."

**Commissioner Schroeder** said, "Thank you."

**Chairman Winters** said, "Thank you. Do we have a Motion?"

**MOTION**

Commissioner Gwin moved to approve the Agreement and authorize the Chairman to sign.

Commissioner Schroeder seconded the Motion.

There was no discussion on the Motion, the vote was called.



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**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Thank you Irene. Next item."

**L. REVISION TO PERSONNEL POLICY 4.310 DRUG TESTING/SUBSTANCE ABUSE.**

**Commissioner Schroeder** said, "I guess I need to ask to delay this for one week."

**Chairman Winters** said, "Is one week long enough?"

**Commissioner Schroeder** said, "It's fine, I'm going to try to get with Harry tomorrow or this afternoon."

**MOTION**

Commissioner Schroeder moved to defer the item for one week.

Commissioner Gwin seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

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**Chairman Winters** said, "Next item."

**M. BUREAU OF PUBLIC SERVICES.**

- 1. AGREEMENTS (FIVE) WITH MID-KANSAS ENGINEERING CONSULTANTS, INC. FOR DESIGN AND CONSTRUCTION STAKING SERVICES FOR VARIOUS PHASES OF THE ROCKY CREEK ADDITION STREET IMPROVEMENTS. DISTRICT #1.**

**Mr. Jim Weber**, P.E., Director, Sewer Operations and Maintenance, greeted the Commissioners and said, "In Item M-1, we're requesting your approval of Contracts with Mid-Kansas Engineering Consultants for design and construction staking services for five different phases of the Rocky Creek Addition street paving project. The separate contracts are for Phases 1, 2, 4, 6, and the Rocky Creek Parkway project. Five contracts with MKEC totals \$314,629. All costs of the project are to be paid by the benefited properties through special assessments and we recommend your approval of the five contracts."

**MOTION**

Commissioner Gwin moved to approve the Agreements and authorize the Chairman to sign.

Commissioner Schroeder seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item."

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**2. MODIFICATION OF PLANS AND CONSTRUCTION, REQUEST NUMBER ONE AND FINAL, WITH SHEARS CONSTRUCTION, L.P., DBA ASPHALT CONSTRUCTION CO., ON SEDGWICK COUNTY PROJECT - WHEATLAND ADDITION, PHASE 4; STREET PAVING. DISTRICT #2.**

**Mr. Weber** said, "In Item M-2, we are requesting your approval of modification of plans and construction number one and final with Shears Construction on Phase 4 of the Wheatland Addition street paving project. Modification will result in a net decrease in our contract with Shears of \$18.50. All costs of the project are to be paid by the benefited properties through special assessments. We recommend your approval of the modification."

**MOTION**

Commissioner Gwin moved to approve the Modification of Plans and Construction and authorize the Chairman to sign.

Commissioner Hancock seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item. Thank you Jim."

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- 3. MODIFICATION OF PLANS AND CONSTRUCTION, REQUEST NUMBER ONE AND FINAL, WITH CONSPEC, INC., DBA KANSAS PAVING, ON SEDGWICK COUNTY PROJECT - KANSAS COLISEUM PARKING LOTS "B", "B-1" AND NORTHWEST ACCESS ROAD. CIP #R-234. DISTRICT #4.**

**Mr. David C. Spears**, P.E., Director/County Engineer, Bureau of Public Services, greeted the Commissioners and said, "Item M-3 is a modification of plans and construction for the Kansas Coliseum parking lots 'B', 'B-1', and northwest access road, designated as R-234 in the Capital Improvement Program. This project has been constructed and is ready to be finished out. There will be a net increase of \$19,338.43 due to variations in planning quantities from actual field measurement. Recommend that you approve the modification and authorize the Chairman to sign."

**MOTION**

Commissioner Schroeder moved to approve the Modification of Plans and Construction and authorize the Chairman to sign.

Commissioner Gwin seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Next item."

**Regular Meeting, September 10, 1997**

- 4. ESTIMATE FROM REISS & GOODNESS ENGINEERS FOR RURAL WATER DISTRICT #3 TO RELOCATE A LINE IN CONNECTION WITH SEDGWICK COUNTY PROJECT NO. 831-Z; ROCK ROAD BETWEEN 79TH AND 87TH STREETS SOUTH. CIP #R-235. DISTRICT #5.**

**Mr. Spears** said, "Item M-4 is an approval of a proposal by Reiss & Goodness Engineers for Rural Water District 3 to relocate their water line at a cost of \$1,374.68 in connection with the road project on Rock Road between 79th Street South and 87th Street South. This project is designated as \$-235 in the Capital Improvement Program. The line is not located in the public right-of-way. Recommend that you approve the relocation and cost estimate."

**MOTION**

Commissioner Schroeder moved to approve the estimate.

Commissioner Hancock seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Thank you David. Next item."

**Regular Meeting, September 10, 1997**

**N. PURCHASING DEPARTMENT.**

**1. RECONSIDERATION OF ITEM 10 FROM THE BOARD OF BIDS AND CONTRACTS' AUGUST 28, 1997 REGULAR MEETING: DISPOSITION OF REAL PROPERTY AT 51ST AND MERIDIAN.**

**Mr. Darren Muci**, Director, Purchasing Department, greeted the Commissioners and said, "This item is available for your action today."

**Chairman Winters** said, "This is the sale of the property on North Meridian. I am one that asked that we hold this off and have more discussion about this. If I heard things correctly, I believe we're now in a position to sell this property than would be different than we talked about last week so I'm open for discussion, but I'm ready to support the sale of this property on this particular right-of-way acquisition project. This will put us back whole on the whole process so I think it is a pretty good move really."

**Commissioner Miller** said, "I have no further discussion on it. I would be supportive on it."

**MOTION**

Chairman Winters moved that the County Commissioners reject the recommendation of the Board of Bids and Contracts and that we approve the sale of the real property located at 51st and Meridian to the highest bidder for the sum of \$50,000.

Commissioner Miller seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Regular Meeting, September 10, 1997**

**Chairman Winters** said, "Next item."

**2. REPORT OF THE BOARD OF BIDS AND CONTRACTS'  
SEPTEMBER 4, 1997 REGULAR MEETING.**

**Mr. Muci** said, "You have the minutes from September 4, there are six items for consideration this morning."

**(1) BITUMINOUS SURFACING - BUREAU/PUBLIC SERVICES  
FUNDING: LOCAL SALES TAX**

"Item one, bituminous surfacing for the Bureau of Public Services, projects number 600-25 and 26. Recommend that we accept the low bid of Shears Construction DBA Asphalt Construction Company in the amount of \$623,685."

**(2) PERSONAL COMPUTER HARDWARE & SOFTWARE  
FUNDING: INFORMATION SERVICES**

"Item two, personal computer hardware and software for Information Services. It was recommended to accept the low bid of Computerland East for the one each Compaq Armada Notebook. That price was \$4,154.74. It was further recommended to reject the bids for the remaining equipment items."

**(3) PREMIUM #4 PAPER - BUREAU/CENTRAL SERVICES  
FUNDING: BUREAU/CENTRAL SERVICES**

"Item three, premium #4 bond paper for the Bureau of Central Services. It was recommended to accept the low bid of Southwest Paper in the amount of \$33,584."

**(4) PERSONAL COMPUTER HARDWARE & SOFTWARE - INFORMATION  
SERVICES  
FUNDING: INFORMATION SERVICES**

"Item four, additional personal computer hardware and software for Information Services. It was moved to reject all the bids received."

**Regular Meeting, September 10, 1997**

**(5) MEDICAL BILLING COLLECTION SERVICES - BUREAU/FINANCE  
FUNDING: BUREAU/FINANCE**

“Item five, medical billing collection services for the Bureau of Finance. It was recommended to accept the low proposal of Capital Consultants Company. That is a 25% per item collection fee. There is a note from Daryl Gardner attached.

**(6) TIRES - MOTOR POOL  
FUNDING: MOTOR POOL**

“Item six, tires for the Central Motor Pool. It was recommended to accept the low bid of Becker Tire of Wichita for Groups I, III, and VIII for a total of \$20,217.14. You may recall that this item was presented to you in recent weeks. We selected a low bid vendor. After a few weeks of providing services they have had a change in the way that they conduct business and they asked to be removed from their obligations and we will go with Becker Tire of Wichita to provide the services for this particular contract.

**ITEMS NOT REQUIRING BOCC ACTION**

**(7) 6TH FLOOR FURNISHINGS - CAPITAL PROJECT  
FUNDING: CAPITAL PROJECT**

**(8) TWIN ENGINE TURBINE AIRCRAFT - SHERIFF  
FUNDING: SHERIFF/MOTOR POOL**

“There are two items that do not require action at this particular time. Those include 6th floor furnishings for Capital Projects, those bids are being reviewed and there is a complete tabulation for your review and a twin engine turbine aircraft, we did receive one additional proposal for the Sheriff’s Department and Central Motor Pool and that is being reviewed. Be happy to take questions and would recommend approval of the recommendations of the Board of Bids and Contracts.”

**Chairman Winters** said, “Commissioner Schroeder.”

**Commissioner Schroeder** said, “Daren, Item 5, I guess I’m not sure what that is. Medical billing collection services, is that EMS?”



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**Mr. Muci** said, "Yes sir, it is."

**Commissioner Schroeder** said, "Okay, it doesn't say EMS any where in there. It says Bureau of Finance."

**Mr. Muci** said, "I'm sorry Commissioner. We had been working with the Bureau of Finance and that representative and we failed to include EMS."

**Commissioner Schroeder** said, "So is this the same company we've been using lately that is doing a better job?"

**Mr. Muci** said, "No, actually this is a different company. Daryl Gardner is here to provide some insight."

**Commissioner Schroeder** said, "Are we in a hurry to do this this week?"

**Mr. Daryl Gardner**, County Controller, said, "This is for the collections of bad debts, the ones that are over six months or a year old, after the billing agency has determined that they cannot pursue them any more so we turn them to a collection agency to collect on the old items. Currently the one doing better is our billing agency."

**Commissioner Schroeder** said, "All right, fine."

**Chairman Winters** said, "Thank you Daryl. Are there other questions? Commissioner Miller."

**Commissioner Miller** said, "I just have a question for David Spears regarding the 77th Street North between Meridian and Broadway project, what is the time line on that? Project number one."

**Mr. Spears** said, "My recollection is that the job should be finished by mid summer next year."

**Commissioner Miller** said, "Okay. Thank you."

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**MOTION**

Commissioner Schroeder moved to approve the recommendations of the Board of Bids and Contracts.

Commissioner Miller seconded the Motion.

There was no discussion on the Motion, the vote was called.

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Thank you Darren. Next item."

**CONSENT AGENDA**

**O. CONSENT AGENDA.**

**1. Right-of-Way Instruments.**

Two Easements for Right-of-Way and two Temporary Construction Easements for Sedgwick County Project No. 618-34; Central between Greenwich Road and the K-96 Bypass. CIP #R-224. District #1.

**2. Section 8 Housing Assistance Payment Contracts.**

<u>Contract Number</u>	<u>Rent Subsidy</u>	<u>District Number</u>	<u>Landlord</u>
C97052	\$514.00	5	Springcreek Apartments
V97053	\$325.00	5	Mark R. Andrews

**Regular Meeting, September 10, 1997**

- 3. The following Section 8 Housing Contracts are being amended to reflect a revised monthly amount due to a change in the income level of the participating client.**

<u>Contract Number</u>	<u>Old Amount</u>	<u>New Amount</u>
V96084	\$355.00	\$351.00
V94092	\$278.00	\$280.00
V940108	\$231.00	\$240.00
C94094	\$165.00	\$232.00
V861001	\$218.00	\$231.00
V95088	\$157.00	\$495.00
C97047	\$12.00	\$375.00

- 4. Real Estate Purchase Contract with William A. Protheroe in the amount of \$44,000 for acquisition of property located at 1134 South Walnut, Wichita, Kansas.**
- 5. Rate plans for services provided by COMCARE's Addiction Treatment Services.**
- 6. Consideration of the Check Register of September 5, 1997.**
- 7. Plat.**

Approved by the Bureau of Public Services. The County Treasurer has certified that taxes for the year 1996 and prior years are paid for the following plat:

Nichols 2nd Addition

- 8. Order dated September 3, 1997 to correct tax roll for change of assessment.**

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**9. Budget Adjustment Requests.**

<u>Number</u>	<u>Department</u>	<u>Type of Adjustment</u>
970519	Corrections-Youth Services	Transfer
970520	Community Development	Transfer
970521	Economic Development	Transfer
970522	Information Services	Transfer
970523	Information Services	Transfer
970524	COMCARE-Mental Health Reform-Cell Dyn Lab Testing	Supplemental Appropriation
970525	Detention Facility Expansion	Supplemental Appropriation
970526	Road and Bridge Sales Tax	Transfer
970527	Road and Bridge Sales Tax	Allotment Change
970528	Various Streets	Supplemental Appropriation
970529	Rocky Creek Phase I-Street	Supplemental Appropriation

**Mr. Buchanan** said, "Commissioners, you have the Consent Agenda before you and I would recommend you approve it."

**MOTION**

Commissioner Gwin moved to approve the Consent Agenda as presented.

Commissioner Hancock seconded the Motion.

There was no discussion on the Motion, the vote was called.

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**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Paul W. Hancock	Aye
Commissioner Melody C. Miller	Aye
Commissioner Mark F. Schroeder	Aye
Chairman Thomas G. Winters	Aye

**Chairman Winters** said, "Is there other business to come before this Board? Seeing none, this meeting is adjourned."

**P. OTHER**

**Q. ADJOURNMENT**

**Regular Meeting, September 10, 1997**

There being no other business to come before the Board, the Meeting was adjourned at 12:01 p.m.

**BOARD OF COUNTY COMMISSIONERS OF  
SEDGWICK COUNTY, KANSAS**

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**THOMAS G. WINTERS**, Chairman  
Third District

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**PAUL W. HANCOCK**, Chairman Pro Tem  
Second District

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**BETSY GWIN**, Commissioner  
First District

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**MELODY C. MILLER**, Commissioner  
Fourth District

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**MARK F. SCHROEDER**, Commissioner  
Fifth District

ATTEST:

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**James Alford**, County Clerk

APPROVED:

\_\_\_\_\_, 1997