

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

### **REGULAR MEETING**

**August 28, 2002**

The Regular Meeting of the Board of the County Commissioners of Sedgwick County, Kansas, was called to order at 9:00 A.M., on Wednesday, August 28, 2002 in the County Commission Meeting Room in the Courthouse in Wichita, Kansas, by Chairman Ben Sciortino; with the following present: Chair Pro Tem Betsy Gwin; Commissioner Tim R. Norton; Commissioner Thomas G. Winters; Commissioner Carolyn McGinn; Mr. William P. Buchanan, County Manager; Mr. Rich Euson, County Counselor; Mr. Don Brace, County Clerk; Ms. Lucretia Taylor, Director of Diversity and Employee Relations, Human Resources; Ms. Irene Hart, Director, Community Development; Mr. Marty Hughes, Revenue Manager, Division of Finance; Mr. Dale Miller, Chief Planner, Metropolitan Area Planning Department; Mr. Glen Wiltse, Director, Code Enforcement Department; Mr. Ron Holt, Director, Division of Culture, Entertainment and Recreation; Mr. John Nath, Director, Kansas Coliseum; Mr. Pete Giroux, Senior Management Analyst, Budget Department; Ms. Phyllis Gearing-Anderson, Director of Preventive Health, Health Department; Mr. Marvin Duncan, Director, Fleet Management Department; Mr. David Spears, Director, Bureau of Public Works; Ms. Iris Baker, Director, Purchasing Department; Ms. Kristi Zukovich, Director, Communications; and, Ms. Lisa Davis, Deputy County Clerk.

### **GUESTS**

Mr. James Draper, Member, Sedgwick County Sheriff's Civil Service Board.  
Mr. Winton M. Hinkle, Hinkle Elkouri Law Firm L.L.C.  
Ms. Nadia Flores, 2001 N. 127<sup>th</sup> Street E. Wichita, Ks.  
Mr. Rob Ramseyer, Ritchie Associates Inc.  
Mr. Russ Ewy, Baughman Company.  
Mr. Mike Tauber, 13420 W. 69<sup>th</sup> Street N., Colwich, Ks.  
Ms. Teriesa Tauber, 13420 W. 69<sup>th</sup> Street N., Colwich, Ks.  
Mr. Terrance A. McClure, 6900 N. Maize Road, Maize, Ks.  
Mr. Steve Jett, 7260 N. 135<sup>th</sup> Street W., Colwich, Ks.  
Mr. Bob Kaplan, Attorney, 430 N. Market, Wichita, Ks.  
Mr. Robert Nices, Lead Assistant, Executive Security.

### **INVOCATION**

The Invocation was led by Reverend Art Smith of First Church of the Brethren.

### **FLAG SALUTE**

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**ROLL CALL**

The Clerk reported, after calling roll, that Commissioner McGinn was absent.

**CONSIDERATION OF MINUTES:** Regular Meeting, July 31, 2002

The Clerk reported that all Commissioners were present at the Regular Meeting of July 31, 2002.

**Chairman Sciortino** said, "Commissioners, I believe you've had a chance to review the Minutes of the meeting of July 31<sup>st</sup>. What's the will of the Board?"

**MOTION**

Commissioner Gwin moved to approve the Minutes of the Regular Meeting of July 31, 2002.

Commissioner Norton seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Next item please."

**APPOINTMENT**

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**A. RESOLUTION APPOINTING JAMES DRAPER (COMMISSIONER WINTERS' APPOINTMENT) TO THE SHERIFF'S CIVIL SERVICE BOARD.**

**Mr. Rich Euson**, County Counselor, greeted the Commissioners and said, "This board is established to review conditions of employment and to conduct grievance hearings for those in the civil service of the Sheriff's Department and this appointment is a three year term to that board, which is established by statute and by Sedgwick County Charter Resolution. We've prepared a resolution for that appointment and I would recommend that you adopt it."

**Chairman Sciortino** said, "Thank you. Commissioners, what's the will of the Board?"

**MOTION**

Commissioner Winters moved to adopt the Resolution.

Commissioner Norton seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "I believe Mr. Draper is in the audience. Mr. Draper, if you could come up to the podium, Mr. Brace our County Clerk will swear you in."

**Mr. Don Brace**, County Clerk, said, "Raise your right hand please.

*I do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of Kansas a faithfully discharge the duties of the office of Sedgwick County Sheriff's Civil Service Board so help me God."*

**Mr. James Draper**, Member, Sedgwick County Sheriff's Civil Service Board said, "I do."

**Mr. Brace** said, "Congratulations."

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**Chairman Sciortino** said, "Would you like to say something, Mr. Draper?"

**Commissioner Winters** said, "Well I would certainly like to thank Mike for taking this. I know it's James but everybody calls him Mike. It's one of those deals I don't know why those things happen but real names and what everybody calls you get changed around. But I certainly appreciate your willingness to serve on the board. I'm confident you'll do a good job and we certainly appreciate when citizens are willing to serve on boards. It's very, very helpful."

**Mr. Draper** said, "Thank you, Commissioner and I'll do my best."

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

**Chairman Sciortino** said, "Clerk, call the next item please."

### **RETIREMENT**

#### **B. PRESENTATION OF RETIREMENT CLOCK TO ROBERTA VAUGHN, CUSTODIAN, DIO-FACILITIES MAINTENANCE.**

**Ms. Lucretia Taylor**, Director of Diversity and Employee Relations, Human Resources, greeted the Commissioners and said, "And I'm here to present the retirement certificate to Ms. Roberta Vaughn who is retiring September 1<sup>st</sup>, 2002 after 13 years of service."

Unfortunately, Ms. Vaughn is not able to be here this today, so we will accept the certificate on her behalf and insure that she receives her retirement clock. Thank you."

**Chairman Sciortino** said, "All right. So I don't guess . . . we can't present the clock. Perhaps maybe at a later time she could come and we could officially give her the clock. In the past, what do you do when someone . . .? Just give them their gift quietly?"

**Ms. Taylor** said, "She's already received her clock."

**Chairman Sciortino** said, "She's already received the clock. Okay. All right. Thank you very much. Next item please."

### **PUBLIC HEARINGS**

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**C. ONLINE PUBLIC HEARING REGARDING REVISIONS TO THE SEDGWICK COUNTY SANITARY CODE.**

**POWERPOINT PRESENTATION**

**Ms. Irene Hart**, Director, Division of Community Development, greeted the Commissioners and said, “Last week, you all established September the 18<sup>th</sup> as the official date for the public hearing on revising the sanitary code. I’d like to tell you today a little bit more about the sanitary code and show the public how they can provide comments to the Commissioners as part of an on-line public hearing.

The Sanitary Code was originally adopted in the 1980s and has had few changes since that time. According to state statute, any changes must be approved by the Kansas Department of Health and Environment, it must receive a public hearing and there are special requirements about publishing it three times in newspapers and not having the public hearing earlier than 10 days after the last publications and it gets quite complex. But we do have the official public hearing set for the 18<sup>th</sup>.

Now as we revise the Sanitary Code, we had certain principles that we followed. First that we wanted at least the current level of protection to the environment and to the public health. We wanted to use the same terms throughout the County codes and call a pot a pot in one code and the same thing in a different code and not call them pots and pans. We didn’t want to repeat what was already in a code. The Sanitary Code had several items that related to animal care. We felt that those kinds of items should belong in the Animal Control Code. We put similar items together. Again the items in the Sanitary Code that related to animals went to the Animal Control Code. We also wanted to meet the State Department of Health and Environment requirements and we needed to reflect the organizational change, in that the code in the past referred to the Wichita/ Sedgwick County Department of Community Health, which is no longer in existence. So we needed to update according to the changes in the organization.

So the way the current code, the one since the 1980s is organized, it’s like a book with several chapters and I’d like to just briefly go through the chapters. The first chapter would be definitions and general statements and we kept that part of it and updated it. The second part was environmental maintenance standards. That one we moved. It had items related to three other departments, Environmental Resources with the Solid Waste Code, animal control and the nuisance resolutions. So the items that were in the current Sanitary Code that related to those issues we moved to the appropriate county codes.

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Private sewage disposal systems, we kept that and it's in the new, updated code. Septic system installers and sewage or waste haulers, both of those have been moved to a new code, which you will be seeing at a later date. Rabies control has been moved to the Animal Control Code and spa pools we kept in the new code. So what we have now is a streamlined code with three chapters. The first one would be general provisions. The second one has to do with on-site wastewater treatment and the third has to do with spa pools.

Going through those briefly, in that first section under general provisions, we updated the definitions, things like cesspools and things that are not commonly used in the literature anymore, those have been updated. We added the individual alternative systems, the individual on-site alternative systems into the Sanitary Code. We've added soil profiling as a detection method to establish where the water table is in a piece of property. We've designated Code Enforcement as the enforcing agency, enforcing department to deal with the wastewater issues and we specified that the Sanitary Code is only applicable in the unincorporated parts of Sedgwick County.

The second chapter, which has a long title, Private Sewage Treatment Systems for Single-use Properties or On-site Sewage Treatment Systems, we identified prohibited practices, such as you can't build a septic system without a permit. You can't build it in the flood plain. You can't build it within 400 feet of a public sewer. You can't illegally discharge the affluent on the ground. We specified the permit requirements. We specified the inspection requirements. We reduced the amount of time allowed for inspections. The previous code had five days. We believe we can deliver an inspection within 48 hours, which is consistent with the other kinds of inspections we do in Code Enforcement. We specified site requirements, which has to do with the type of system being used, the soil type, the water supply, the distance from water wells, the porosity of the ground, the separation between the system and a water well or a property line. We specified design standards. The state has some rather specific requirements and it requires water-tight chambers and other details. And under operations and maintenance, for the alternative systems we've added an annual permit requirement.

Under spa pools, which are public whirlpools, hydro-therapy pools in the unincorporated part of the County, we took the same language and put that in the Sanitary Code. That part of the code would continued to be administered by what's now the City Environmental Health Department. As far as I know, there aren't any spa pools in the unincorporated part of Sedgwick County and there haven't been any. So it's a matter that we're keeping for public protection. We do have trained inspectors, through City Environmental Health who will continue to support that code.

We're doing public hearings in two different ways. The official legal public hearing will be September the 18<sup>th</sup> at your Commission meeting, but we're also opening an on-line public hearing

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at the close of this meeting. It will be available to the public through the Internet, through the County website and that will be open from today through September 12<sup>th</sup>. At that time, we can compile the comments and get them to you for your deliberation on the 18<sup>th</sup>.

What I'd like to do is to show you, show the public, how you can access the public hearing and also access the Sanitary Code itself because what I gave you was just a very brief version of many pages. If you go to the County website, which is [www.sedgwickcounty.org](http://www.sedgwickcounty.org), under County headlines, and I'll read it. It says, 'Sanitary Code Changes, On-line Public Hearing'. The citizen would click there. Goes to the on-line public hearing section and we'll have one public hearing open, which is on the Sanitary Code.

If you click on the part that says Revised Sanitary Code, that will take you directly to the copy. There's the general section and you'll see the other provisions through there. So anyone who is interested can read the section and then go back to the public hearing part and add their comments. You'd click on that part. It describes the public hearing, when it's open, when it's closed and how to enter your comments. It says that you've got to be a responsible citizen and we need to have your name, as we would in any other public hearing, and then comments could be added there. And David Spears seems to be very interested in this public hearing. I'm sure he's going to provide us some good comments.

And any of our public hearings are public record, so we do need to have this information. When the comments are posted on-line, that information is not available for others to see. They just see the comments that are submitted. So if you want to see what other people have said about this. Oh, you've checked it over first and then submit the comments. So now you can see what other folks have had to say about that topic. So David liked it and we've had a test.

So this is how the on-line public hearing will be conducted and we'll be back on September the 18<sup>th</sup> with a compilation of the on-line hearing comments and you'll be hearing from the public, should they care to come in person. And we can try to answer any questions you might have."

**Chairman Sciortino** said, "Okay. Irene, I don't know that I have a question of you. I think you just answered it with your last comment. I was going to ask Mr. Euson, assuming this goes on in the future and we have other on-line hearings, right now we just are opening the on-line portion, but when you come back with us on the comments of the on-line portion, that's when, should there be any people in the audience . . . Because I'm a Neanderthal on computers. I like to talk to people. But I mean, like for example if there's anybody in the audience today that would like to make comment, they should wait until you come back with the on-line, and that's when we would do the comments from the audience that might want to make a comment. How do we work that, Mr. Euson?"

**Mr. Euson** said, "You would wait until the public hearing to receive comments from those who are

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physically present, but those who wish to enter comments into our on-line system can do that.”

**Chairman Sciortino** said, “All right. So now we start the on-line and then at a specified time you’ll be back to show us what was on the on-line. At that time would be when the public comments from people in the audience would be held. Okay. All right. What date was that again?”

**Ms. Hart** said, “September the 18<sup>th</sup>.”

**Chairman Sciortino** said, “September the 18<sup>th</sup>. Okay, thank you. Any other comments?”

**Commissioner Norton** said, “If we have a large volume, as people get used to this, will we get that ahead of time or do we have to wait and get that at the open public hearing?”

**Ms. Hart** said, “That’s why we’re closing it on the 12<sup>th</sup>, so that we’ll have time to get those comments put together and sent to you.”

**Commissioner Norton** said, “Okay. So we’ll get that packaged and brought to us ahead of time. I just suspect, as years go by, there’s going to be a topic that’s pretty volatile and we’ll get a lot of information and I’d hate to get it all to read just in that one morning or on the Friday as we get the agenda or whatever.”

**Ms. Hart** said, “One good thing about this is you can go and look at the copy itself. You don’t have to wait for someone to send you a copy or go find one and you can do it 24 hours a day. So if you can’t come down here at 9:00 . . .”

**Commissioner Norton** said, “We can do it on-line but just want to make sure we have a complete package of it at some point.”

**Chairman Sciortino** said, “Is that all, Commissioners. Irene, is this something now . . . This is test, so to speak. Are we now, whenever there’s a topic in front of us that needs public comment are we going to start doing on-line first and then physical comments later? How do we pick and choose which items we’re going to have for on-line, as opposed to whatever you call when human beings are in front of you?”

**Ms. Hart** said, “This is the second time we’ve done this. The first one was on the County budget. I think, as we go through it, we’ll try to figure out which lends itself to an on-line hearing. I would imagine that some of the more simple ones, like the public hearing that follows my item, a public hearing on the performance of the micro-loan program, it’s probably not of major interest to most people and there probably won’t be a great deal of public comment about that. So that one

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wouldn't be appropriate for an on-line hearing. So I imagine we'll figure it out as we go along."

**Chairman Sciortino** said, "Okay, great. So, do we now have to officially make this Motion of opening the public on-line hearing? Is that what we're supposed to do for this, Mr. Euson?"

**Mr. Euson** said, "The recommended action is to open the on-line public hearing and that's what I'd recommend that you do."

**Chairman Sciortino** said, "Okay. I would entertain a Motion to that effect."

**MOTION**

Commissioner Gwin moved to open the online public hearing.

Commissioner Norton seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Thank you. Next item please."

**D. PUBLIC HEARING TO EVALUATE THE PERFORMANCE OF THE SEDGWICK COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT MICROLOAN PROGRAM.**

**Mr. Marty Hughes**, Revenue Manager, Division of Finance, greeted the Commissioners and said, "On December 11<sup>th</sup>, 1998 Sedgwick County commenced a Community Development Block Grant Micro-loan program funded by a combination of \$50,000 in GDBG funds and \$10,000 of County funds. These funds are made available to County businesses in small loans of not more than \$15,000 per business, for which the businesses were required to meet certain hiring and reporting requirements, as well as repaying the loans based on mutually agreed payment schedules.

In July, 1999 the Kansas Department of Commerce and Housing provided an additional \$50,000 of

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CDBG funds for this loan fund that we have. Over the course of the last three and a half years, Sedgwick County has issued seven loans totaling \$105,000 to small businesses, which in turn have created 16 new or retained jobs, of which 12 of these jobs are filled by low to moderate income individuals, which is another requirement of the CDBG funds.

South Central Kansas Economic Development District, SCKEDD, has performed an exemplary job of administering these funds for the County. Since this is a revolving loan fund and as loan payments are received and accumulated, they will continue to be issuing loans to qualified businesses in Sedgwick County. Right now, the account balance in the repayment account is around \$28,000 and we receive about \$2,000 a month. So we can probably do maybe two loans a year at this rate. So we continue doing that through the revolving loan fund.

But as part of the grant funding from the Kansas Department of Commerce and Housing, it's required that we have a public hearing to show the performance of the grant and in order to close out the grant, so that's kind of what we're doing today. This public hearing will be the Neanderthal type of public hearing, not the new on-line public hearing. And I'd recommend that we open that public hearing at this time."

**Chairman Sciortino** said, "Well, this won't be the last time I've opened my mouth and inserted my foot. I would like to now open the public hearing portion of this item. Is there anyone here in the audience that would like to speak on this item, either for or against? Okay, I don't hear any. So I'll close the public hearing portion and limit the comments here to the Bench.

I think I see what the Motion should be, or do I just . . . Can I just read that or is that something that has to actually be a Motion? Just direct staff to submit grant close-out documents to Kansas Department of Commerce and Housing. That portion should be . . . Is that enough just from me or that should be a Motion?"

**Mr. Euson** said, "Yes, sir. That should be a Motion."

### **MOTION**

Commissioner Norton direct staff to submit grant close out documents to Kansas Department of Commerce and Housing.

Commissioner Gwin seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Thank you. Next item please."

**NEW BUSINESS**

**E. RESOLUTION AUTHORIZING RELEASE OF RAYTHEON AIRCRAFT COMPANY'S FACILITY IN ANDOVER, KANSAS FROM THE LIEN CREATED THROUGH ISSUANCE OF MULTIPLE SERIES OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR RAYTHEON AIRCRAFT COMPANY (FORMERLY BEECH AIRCRAFT CORPORATION.)**

**Mr. Winton M. Hinkle**, Hinkle Elkouri Law Firm L.L.C., greeted the Commissioners and said, "With me today is Larry Knott with Raytheon Aircraft Corporation. Sedgwick County has issued Industrial Revenue Bonds for the benefit of Beech Aircraft Corporation, now Raytheon Aircraft, since the mid 1980s. And since 1989, it has issued a portion of the bonds each year that are issued for the improvement of facilities located in Andover, Kansas as well as Salina. Raytheon has reached a decision to sell its Andover facility. And in connect with that, the purpose of our appearance before you today is to request approval of a resolution which would release the Andover bond financed property from the Industrial Revenue Bonds and authorize Sedgwick County to

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convey title to the bond financed property back to Raytheon.

Raytheon will actually continue to lease a small portion of the Andover facility from the new owner, when that transaction is closed. Most of the operations which have been conducted there will be relocated to its Sedgwick County facilities. That means that, among other things, a significant part of the equipment and machinery located in that facility, which has been financed with bonds, will be . . . and I think in some cases perhaps already has been relocated to Sedgwick County. That will have some impact, under the inter-local cooperation agreement, that becomes taxable for ad valorem tax purposes in Sedgwick County. To the extent that that property may still be exempt, under the property tax abatement, given the that the time the bonds were issued, the remainder of that term will continue to be in effect with respect to its taxation in Sedgwick County to the extent that it's fully taxable, it will immediately go on the tax rolls.

There's a fair stack of papers that are required to accomplish what we are doing but the simple description of it is we're releasing the property from the bonds and we're conveying the title to it back to Raytheon. I'd be happy to try to answer any questions you might have."

**Chairman Sciortino** said, "Commissioners, any questions of this applicant? Commissioner Gwin."

**Commissioner Gwin** said, "Just for clarification, Mr. Hinkle, the bonds that were allocated to that, you're not asking the County to forgive those, but just to transfer those back to Sedgwick County property. Is that correct?"

**Mr. Hinkle** said, "That's correct."

**Commissioner Gwin** said, "Okay. I wanted to make sure that was clear for folks."

**Chairman Sciortino** said, "Okay. Mr. Euson, just housekeeping. The reason we put a lien on property when we issue bonds is like any bank, for collateral should there be a default on the bonds, we'd have some collateral to draw back on. Is that the basic reason why there were liens placed on this property?"

**Mr. Euson** said, "Yes, that's correct."

**Chairman Sciortino** said, "By releasing the lien, is there still sufficient collateral? Where does that additional lien go? Does it now just non-collateralized loan or where does that additional . . . What other properties are going to be liened upon to cover the outstanding debt or is the bond paid off sufficiently that existing properties are sufficient to cover it?"

**Mr. Euson** said, "Well, perhaps Mr. Hinkle can help me with that answer. My understanding of

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what you are doing is releasing a portion of the security for the bond issue that's represented by this property that's in Andover. And so you are leaving the rest of the security in place, which I believe is here in Sedgwick County and that's really all you're doing. So since the bond holder has consented to this and Raytheon is the owner of all the bonds, then it's really more an issue for them than it is for anybody else. But perhaps Mr. Hinkle can help me with that answer as to what's left for security."

**Chairman Sciortino** said, "Can you shed a little light on that, Mr. Hinkle?"

**Mr. Hinkle** said, "I agree with Mr. Euson's comments. This instance is unusual in that Raytheon Company, Raytheon Aircraft's parent corporation owns all of the bonds. These bonds represent a very tiny percentage of the total amount of outstanding bonds, which you have issued and in fact they have been significantly paid down. The effect is that the obligation of Raytheon Aircraft Company to the Raytheon Company remains, but it really is converted to an inter-corporate transaction, as opposed to being represented by bonds."

**Chairman Sciortino** said, "So the parent company bought the bonds. Okay, all right. I'm fine with it. I don't have any other questions. If there are no other questions, I'd entertain a Motion on this item please."

**MOTION**

Commissioner Norton moved to adopt the Resolution.

Commissioner Gwin seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Thank you very much, Mr. Hinkle. Mr. Euson, . . ."

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**Commissioner Winters** said, “Mr. Chairman, I’ve just had contact with our office. Commissioner McGinn had an important meeting in Bentley this morning at 7:30 and she is about 25 minutes from being here. So we do expect her and on this first zoning case we need to have all five Commissioners here but she is about 25 minutes away.”

**Commissioner Gwin** said, “Can we go on to two or three?”

**Chairman Sciortino** said, “Well, that’s what I was going to say. Can we go on and take the two and three that don’t require five, or do we just defer the whole planning department package until . . . We can go to two?”

**Mr. Euson** said, “I’d say you go on to item number two.”

**Chairman Sciortino** said, “Okay. All right. So let’s take this out of . . . Let’s go to F-2 if we could, Madam Clerk.”

### **PLANNING DEPARTMENT**

#### **F. METROPOLITAN AREA PLANNING DEPARTMENT (MAPD).**

- 2. CASE NUMBER ZON2002-00040 – ZONE CHANGE FROM “SF-20” SINGLE-FAMILY RESIDENTIAL TO “GO” GENERAL OFFICE, GENERALLY LOCATED NORTH OF 21<sup>ST</sup> STREET NORTH AND EAST OF 127<sup>TH</sup> STREET EAST. DISTRICT #1.**

### **POWERPOINT PRESENTATION**

**Mr. Dale Miller**, Chief Planner, Metropolitan Area Planning Department, greeted the Commissioners and said, “Commissioners, this is a request for General Office zoning. The application area is that area that’s outlined in black, located north of 21<sup>st</sup> Street, east of 127<sup>th</sup>. This is part of a larger parcel that is currently being platted as the Hawthorne Addition. Most of the area to the east and to the north is being developed as residential uses. This particular tract that’s 2.1 acres in size, the applicant is desirous of getting General Office zoning for this site. As you can see, here to the west, there is existing Limited Commercial zoning. This tract has been approved with a Community Unit Plan for the Reed Commercial CUP and it’s awaiting platting and once it’s

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platted, it will be converted but in effect, it is pretty much of a transition type zoning request from a more intense use to a lesser intense to an even lesser intense. This little strip in here on the plat, if we had the plat available, you'd see that this is left over as an access road that will lead back into residential uses here. And so, essentially, everything to the west is either a roadway or will be non-residential use.

That's the way the site looks today. It's primarily used for agricultural uses. The zoning as it exists today and the land use guide is showing that originally we thought this would be appropriate for single-family, but given the frontage that it has on 21<sup>st</sup> Street, why a more intense use is probably appropriate."

**Chairman Sciortino** said, "And Dale, everything south is commercial, is that right?"

**Mr. Miller** said, "There is an existing . . . it's similar to this situation. There is 'LC' zoning that's already in place. The applicant is awaiting platting on it as well.

And this is the site as it looks today. There's pretty good hedgerow along the south side of the property. Staff is recommending approval. The Planning Commission recommended approval and there wasn't anyone at the meeting to speak in opposition to this and I don't believe we received any phone calls on this particular one."

**Chairman Sciortino** said, "All right, thank you. Any questions of Dale? Okay, what's the will of the Board on this item? Excuse me. Even though it isn't a requirement, it is our policy to ask on zoning cases if anyone is in the audience that would like to speak for or against this item. Now would be the time to come to the podium."

**Commissioner Gwin** said, "And since we have so many, this one specifically is the zone change from 'SF-20' to General Office on 21<sup>st</sup> Street, East of 127<sup>th</sup> Street East."

**Chairman Sciortino** said, "I see that there is no one that wishes to speak to it."

### **MOTION**

Commissioner Gwin moved to approve, subject to platting within one year, direct staff to prepare an appropriate resolution after the plat is approved, and authorize the Chairman to sign.

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Commissioner Winters seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, “Next item please.”

- 3. CASE NUMBER ZON2002-00041 – ZONE CHANGE FROM “SF-20” SINGLE-FAMILY RESIDENTIAL TO “MF-18” MULTI-FAMILY RESIDENTIAL, GENERALLY LOCATED APPROXIMATELY 874 FEET SOUTH OF 21<sup>ST</sup> STREET NORTH, EAST OF 127<sup>TH</sup> STREET. DISTRICT #1.**

**POWERPOINT PRESENTATION**

**Mr. Miller** said, “This is a request for ‘MF-18’ zoning on property that’s located about a third of a mile, or a quarter of a mile south of 21<sup>st</sup> and east of 127<sup>th</sup> Street. It’s the area outlined in black here.

It is also similar to this other case in that there is a proposed plat that covers most of this tract that is being proposed for single-family residential use but they are desirous of converting the tract to ‘MF-18’ which is multi-family. It allows for a density of up to 18 dwelling units per acre.

The site is 14.21 acres in size and, as you can see, the surrounding zoning is ‘SF-20’ today. Again, this tract has been approved for a commercial Community Unit Plan and once the plat is completed on it, it will convert to ‘LC’ as opposed to the single-family that you see today and then, further to the west here, across 127<sup>th</sup> that’s all single-family, ‘SF-5 zoning. There are homes located here and here and up here I believe or it may be there and then there are also homes to the south here and then, of course, this is the Rocky Creek development. But in terms of adjacent to the property, it’s vacant today and under the ownership of the applicant.

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Again, this is looking at the site to the east, to the north towards where the commercial Community Unit Plan will be, south towards what would ultimately be single-family and then west, the field there and there are homes off in the distance. I'm not sure whether that's a home or whether that's Trinity Academy or the Baptist church out there.

Staff is recommending approval. Planning Commission recommended approval. I did receive one phone call that was inquiring about the appropriateness of putting multi-family in this location, but there weren't any speakers in opposition at the Planning Commission and we have not received any written protests."

**Chairman Sciortino** said, "Is that the end of your presentation, Dale?"

**Mr. Miller** said, "Yes."

**Chairman Sciortino** said, "Okay. Commissioner Gwin."

**Commissioner Gwin** said, "Dale, just real quickly on this, I received a call too which I called to talk to you about and to the applicant. The reason the Planning Staff is recommending this, talk to me about the transition from commercial, if you will, to residential. Is that why the Planning staff sees this as appropriate?"

**Mr. Miller** said, "Yes, it is not atypical for more intense uses to be located on the corner, as is the case here with the Limited Commercial, proposed commercial Community Unit Plan and then to have what is generally termed as a step-down or a buffer zoning district that is less intense, which is the 'MF-18' than what would be on the corner. The Limited Commercial, obviously commercial uses are more intense than multi-family uses and then to step down one more step to a less intense use, which in this case they're proposing to be single-family. The idea being that this, in effect, provides a transition zone of medium intensity uses that would buffer the more intense commercial uses from the single-family and it provides a harmonious land-use relationship, so that theoretically the uses are hospitable to each one."

**Chairman Sciortino** said, "Dale, 'MF-18' that would be like an apartment complex?"

**Mr. Miller** said, "Could be. They could also do single-family or duplex. It allows for both of those as well."

**Chairman Sciortino** said, "It just means it gives them the density of 18 homes, as opposed to just Rural Residential or 'SF-20', single-family, it gives them the option to go with duplexes, quad-

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plexes or an apartment complex.”

**Mr. Miller** said, “That’s correct.”

**Chairman Sciortino** said, “Okay, thank you. I don’t see that there’s any other comments. So what the will of the Board?”

**Commissioner Gwin** said, “I think there may be people here to speak to this.”

**Chairman Sciortino** said, “Okay. Are there some people here in the audience that . . . Please ma’am, if you would, just come up to the microphone. Give us your name and address and then you have up to five minutes to present to us whatever you wish.”

**Ms. Nadia Flores**, 2001 N. 127<sup>th</sup> Street E., Wichita, Ks., greeted the Commissioners and said, “And he was just showing the pictures, there’s no housing over there but in reality there is a house right across from there.”

**Chairman Sciortino** said, “Could we have the map up for where this young lady is referring to so we can get a visual of what she’s talking about please.”

**Commissioner Gwin** said, “Where’s your house, Ms. Flores?”

**Chairman Sciortino** said, “Could you point, Ms. Flores?”

**Ms. Flores** said, “Right there is my house. And just like the gentleman said, there is nobody else in that area except behind me going west and going east there’s nobody else over there. And my husband and I, we have worked for 22 years to live in a peaceful, quite area and we really believe, me working night shift 12, 13 hours every night, coming home, sleeping during the day, putting some apartments over there will really make it crowded and I really believe and invite people to come over there and have a nice single home over in that area and live as peaceful as we do. But putting apartments over there will really effect the quietness of the neighborhood, I mean my neighborhood, the beauty of it and it’s going to be very crowded. I mean we already have the school behind us. We have teenagers over there and it’s . . . you know, I have a teenager now and he’s 21 and he makes noise and they pass by and it’s okay . . .”

**Chairman Sciortino** said, “If you have a teenager you have my condolences.”

**Ms. Flores** said, “You know, to have multiple family houses on top of each other, for Ritchie it’s more like a business but for us it’s our life over there and I think apartments is a money making business and it’s not to make people happy. It’s just to make us unhappy and I know we’re the only

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family that is mostly effected and I would like the people to take that into consideration. When it went to the city I was out of town, so I was unable to represent myself. My husband and I were gone at that time, so we weren't able, so when I came back I found the notice and started investigating and made several phone calls and of course it said 'Yes, it's going to improve the value of our property'. Well, we aren't interested in the value of our property.

We want the peace and quite that we have now and we'd like to share it with single-family housing and it's really nicely set but we are really directly effected. The beautiful trees right there along the street, along by themselves, you know. It's just gorgeous. So I beg not to ruin that with apartments. I'm sorry. I'm kind of tired. That's all I have to say."

**Chairman Sciortino** said, "There's nothing else right now that you wish to say about it."

**Ms. Flores** said, "No, it's just we like houses over there and families just like us and not apartments because that's nothing but a business building. And we like to sleep during the day, which you will not get with all the crowdedness of all the cars riding by."

**Chairman Sciortino** said, "I understand. All right, thank you very much. Any questions of this presenter? Is there anyone else in the audience? Yes, sir. Please come up and give your name and address, and like the young lady before you, we can allow you five minutes to address us."

**Mr. Rob Ramseyer**, Ritchie Associates, Inc., greeted the Commissioners and said, "With Ritchie Associates, the applicant. Thanks for the opportunity to let me visit here a little bit today. We're asking for the Multi-Family zoning for two reasons. First, and Dale alluded to this, is the Multi-Family can actually buffer transition between the commercial on the corner and the residential to the south. That's one of our motivations and the second motivation is we feel that there's a need in the marketplace in this area, at this time, for multi-family housing. There's very little of that out there right now and we think there's a good potential market there in the future.

Planning staff has been supportive of this change since the date of the first application and to date there's been no public opposition at Planning Commission to the zoning or any of the zoning hearings or at the hearings for the preliminary or final plats. The zoning is approved by Planning Commission by a vote of 11 to nothing, so they were supportive of it and, as again I said, as staff was supportive of it.

I've visited with Ms. Flores yesterday, or day before yesterday I guess, at length about this application. We had a very polite, business-like conversation and I basically pointed two things out

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to her. One is the multi-family zoning we're applying for is more restrictive, in other words it's the 'MF-18' versus 'MF-29', which is more dense. And I also pointed out, and I think this is the important point, that given the price of the single-family homes that is planned for that area, there's no way we can put any substandard multi-family housing on this ground we're applying for this zoning. So I hope that would have assured her.

We also discussed the fact, and she alluded to it, that this area which has been a rural setting that she and her family have enjoyed for quite a while is now set for some really active development activity over the next few years. There's three plats either under construction or in the platting stages north and south of 21<sup>st</sup> and along 127<sup>th</sup>, one of which was part of the General Office zoning today. So that's going to be pretty active. So thank you for your consideration and I'll be happy to field any questions."

**Chairman Sciortino** said, "I believe we do have one. Commissioner Gwin."

**Commissioner Gwin** said, "Thank you, Mr. Chairman. Mr. Ramseyer, thanks for being here this morning and Ms. Flores too. I've spoken to both of you about this case, have taken phone calls from both of you. Rob, is your plan far enough on this parcel to indicate whether or not there's buffering or any sort of fencing or those kinds of things along 127<sup>th</sup>?"

**Mr. Ramseyer** said, "We're not that far along. We're just in the platting and zoning stages at this point obviously and working out the petitions and so forth. However, there is a tree row along there, a hedge tree row, which it is our intent to try and save if the 127<sup>th</sup> Street road right-of-way would allow that. Any time we can save trees we do, number one because they look good, number two it saves us money. So that is our intent. I can't . . . We can't go to the bank with that right now, and typically we put some sort of buffer along an arterial street but again, we have no specific plans. We're just not to that point yet."

**Commissioner Gwin** said, "Right. Well, Ritchie has done a lot of areas like this where you have some commercial uses and some mixed use, multi-family and single-family. Is there anything, any area that you'd like to point out to me or to Ms. Flores that this would be similar or someplace that you could point?"

**Mr. Ramseyer** said, "One place we have done multi-family and commercial obviously is the Tall Grass, which is one of Ritchie Development's first developments, or large scale developments, and there are apartments there, patio homes and various prices in single-family, office and commercial. That would be one example. This is not atypical. In the Balthrop plats, and there's several of them that are pieced together down at Central and Greenwich Road, you have commercial on the corner which was not ours but it was part of the CUP and in addition there's duplexes that kind of act as a buffer between residential and the church and the commercial and that's worked out real nicely.

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And there was real fear from the people in the Balthrop Addition of the duplexes initially and you know they turned out far better than anyone anticipated and those fears have gone away completely.”

**Commissioner Gwin** said, “Okay. With this zoning then you’re not necessarily forced to have an apartment complex, but you could have duplexes or four-plexes or a less dense apartment uses.”

**Mr. Ramseyer** said, “And again, at this time, we’re not that far along to really know what the market wants.”

**Commissioner Gwin** said, “Right, okay. All right. Thank you. I think that’s it for now.”

**Chairman Sciortino** said, “I do have . . . Is it of this applicant? Okay, Commissioner Norton has a question.”

**Commissioner Norton** said, “How many acres is this site?”

**Mr. Ramseyer** said, “Fourteen. The entire Reed’s Cove plat, excluding the commercial, I think it’s 123 or 124 acres. So it’s about 10% of the site of the Reed’s Cove plat.”

**Commissioner Norton** said, “Okay. Where will the entryway be? Are you that far along to know where the entry will be?”

**Mr. Ramseyer** said, “On the plat we’ve been allowed one entry off of 127<sup>th</sup> into the area that’s being proposed zoning for the apartment, and then there’s a collector street on the south side of this apartment piece that comes in off of 127<sup>th</sup> and then curves up to 21<sup>st</sup>, where our major entry will be. 127<sup>th</sup> Street entry we plan as a secondary entry.”

**Commissioner Norton** said, “Will it line up with the street just south of Ms. Flores property.”

**Mr. Ramseyer** said, “Yes. You can see the street is just on the south side there of that ground.”

**Commissioner Norton** said, “Curved?”

**Mr. Ramseyer** said, “Yes. That’s why the curved . . .”

**Commissioner Norton** said, “Is there a street there, presently?”

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**Mr. Ramseyer** said, "On our property, no. That's farm ground right now."

**Commissioner Norton** said, "So there isn't a street there but it's planned to be there."

**Mr. Ramseyer** said, "Right, it's on the plat, yes sir."

**Commissioner Norton** said, "Okay. What kind of an entryway? Is it a street or is it an entryway?"

**Mr. Ramseyer** said, "It will be a street with an island in the middle, with planting on it, divided entry with plantings."

**Commissioner Norton** said, "Okay. But the main entryway into the complex will be off 21<sup>st</sup> Street."

**Mr. Ramseyer** said, "That will be our main entry and our first phase, yes."

**Commissioner Norton** said, "And what is the zoning to the south?"

**Mr. Ramseyer** said, "South of the railroad tracks is a Rocky Creek Addition, which is substantially residential with office on the corner of 13<sup>th</sup> and 127<sup>th</sup>, office zoning there."

**Commissioner Norton** said, "On this plat, just south of where the road . . ."

**Mr. Ramseyer** said, "Single-family."

**Commissioner Norton** said, "And then what about the corner?"

**Mr. Ramseyer** said, "SF-5. On the corner north of the apartment ground, multi-family ground is commercial and it has been zoned for a couple of years."

**Commissioner Norton** said, "Okay and the property south, on 127<sup>th</sup> Street at 13<sup>th</sup>? Is that 13<sup>th</sup>?"

**Mr. Ramseyer** said, "That would be the railroad tracks at the half-mile line between . . . And that's the Rock Creek Addition."

**Commissioner Norton** said, "Okay. That's all the questions I've got."

**Chairman Sciortino** said, "Okay. I don't see that we have any other questions of you. Thank you."

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Is there anyone else here in the audience that would like to speak to this item? Okay, I don't see any, so I'll restrict further comments to the Bench."

**Commissioner Gwin** said, "If there are none, and again, I appreciate Ms. Flores concern and Mr. Ramseyer's presentation. Having . . . familiar with a lot of the Ritchie developments, I'm confident that this will be well done. That they do use the main thoroughfares as their main entrance. So, I'm going to support the Metropolitan Area Planning Commission and the staff recommendation."

**MOTION**

Commissioner Gwin moved to approve, subject to platting within one year, direct staff to prepare an appropriate resolution after the plat is approved, and authorize the Chairman to sign.

Commissioner Winters seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

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

- 4. CASE NUMBER ZON2002-00027 – ZONE CHANGE FROM "SF-20" SINGLE-FAMILY RESIDENTIAL TO "LC" LIMITED COMMERCIAL, GENERALLY LOCATED ONE-HALF MILE SOUTH OF PAWNEE AND EAST OF GREENWICH. DISTRICT #5.**

**POWERPOINT PRESENTATION**

**Mr. Miller** said, "We really do need the five Commissioners here."

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**Chairman Sciortino** said, "Do we need the five on this one here. I thought this was approved by the MAPC."

**Mr. Miller** said, "Oh, I'm sorry. I'm ahead of myself, yes. I'm sorry. Yes, this case . . ."

**Chairman Sciortino** said, "Let's clarify that for a minute. Since this was approved by the MAPC, what type of a vote do we need, Mr. Euson, to approve?"

**Mr. Euson** said, "To approve you need three votes."

**Chairman Sciortino** said, "And to disapprove we would need what?"

**Mr. Euson** said, "To disapprove you would need four votes."

**Chairman Sciortino** said, "So we have sufficient people to approve or disapprove because if not, we wanted to hold until . . . All right, fine. Please continue."

**Mr. Miller** said, "I was thinking of the first one. This one is an interesting case. It is . . . the property is located here on the east side of Greenwich, south of Pawnee, almost to the half mile line. And it's a case where the applicant owns 54 acres of ground and it is currently developed with a single-family home and there are some accessory structures there that are currently in use. One is . . ."

**Chairman Sciortino** said, "Dale, just for . . . the east/ west street to the south would be 31<sup>st</sup> Street?"

**Mr. Miller** said, "This would be the half-mile line here."

**Chairman Sciortino** said, "Okay, and below that would be 31<sup>st</sup>."

**Mr. Miller** said, "Yes."

**Chairman Sciortino** said, "Okay. And to the north is Pawnee. Okay, I got it."

**Mr. Miller** said, "And the applicant, as I indicated, has a couple of accessory structures and they originally had a business on Kellogg in which they sell specialty racing parts and they moved off of Kellogg to this location and began selling those parts, thinking that because it was legal on Kellogg, that they would be legal here. And as it turns out, it's not an appropriate use for the way it's zoned, so they've now come in to get the appropriate zoning for this tract."

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It is zoned 'SF-20' and what they need to go to is Limited Commercial zoning in order to have the retail sales portion of their activities. If they do, as I say, specialty auto parts sales and specialty auto repair and the repair portion is an appropriate home occupation use. It's only the retail sales portion that is causing the violation. So, they are in asking for the approval of the 'LC' zoning for the retail sales of their parts.

And this is the Comprehensive Plan recommended land use, shows that at least at the time the plan was created that the thought was this would be primarily residential use out there. This is the property in question, looking at some of the buildings on site, looking south on Greenwich."

**Chairman Sciortino** said, "And does the applicant own the land all the way to the half-mile?"

**Mr. Miller** said, "The applicant owns the 54 acres that surrounds the application area entirely. The application area is only .53 acres in size."

**Chairman Sciortino** said, "And that's all the applicant's land that you're showing us now."

**Mr. Miller** said, "Yes. Looking north and south from it. If this is approved the zone change would only apply to the .53 acres and, as I said, it would be surrounded by the applicant's remaining 54 acres and there would be . . . one of the conditions of approval that's been recommended is that they tie say another four acres or so of their ownership to this .53 acres, so that in the event that at some point in the future they decided to sell that off, it would have enough land with it so that it could be approved with either a lagoon or a septic system if there weren't public services out there and that way the house and the accessory structures wouldn't end up becoming potentially a non-conforming or illegal situation in the future."

**Chairman Sciortino** said, "And that's acceptable by the applicant?"

**Mr. Miller** said, "Yes."

**Chairman Sciortino** said, "Okay."

**Mr. Miller** said, "MAPC is recommending approval, subject to a protective overlay that restricts the property to 'SF-20' uses plus it allows for the retail sales use and it takes care of all the issues that make this property illegal, and the protective overlay, it is my understanding is agreed to by the applicant. Planning Commission is recommending approval of it. There are approximately 11 conditions in that protective overlay and I won't go through each one of them. They were included in the staff report. But Planning Commission did recommend approval and with that I'd try to answer any questions."

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**Chairman Sciortino** said, "Do we have any questions of Dale? I believe the applicant's individual is here, if you'd like to come up and visit with us and then we'll let anyone that wants to speak, speak also."

**Mr. Russ Ewy**, Agent for applicant, Baughman Company, greeted the Commissioners and said, "I'll make my comments very brief here but as Dale showed you the site in question, it looks like any other farmstead in the County."

**Chairman Sciortino** said, "Could we turn down the lights just a little bit, since this gentleman might be referring to a photo, just so that we could see it or whatever?"

**Mr. Ewy** said, "You can see that this looks just like any other farmstead out in the County. The building that you see in the center is the actual retail sales that we're discussing today and Dale mentioned the protective overlay, the conditions of that, were not only approved by the Planning Commission but volunteered by the Holzmanns to assure that what you see here today will remain this exact same use in the future, as far as not being able to be sold off for any ownership by a separate party or any type of signage that would announce this as a commercial, not a residential use."

**Chairman Sciortino** said, "Those are in the protective overlay?"

**Mr. Ewy** said, "Those are in the protective overlay, yes sir. We had no property owners in protest. As a matter of fact, attached to your materials you'll see a signed petition supporting the Holzmanns' request, as well as the only negative votes, you'll see that it was an 8 to 2 vote by the Planning Commission. The two dissenting votes, if you look through the minutes you'll notice actually were opposed to approving the zone change because they felt that this type of request should be permitted by right by the zoning code and actually called for perhaps the investigation of making this type of use a little bit more permissible by the zoning code, without having to go through the expense and the public hearing process of a zone change. So we think we have very good support not only by the surrounding property owners, but also by the Planning Commission. I'll stand for any questions and, like I mentioned, the Holzmanns are here if you have any questions of the applicants."

**Chairman Sciortino** said, "All right, thank you. We do have a question or a comment. Commissioner Gwin."

**Commissioner Gwin** said, "Question real quickly. Mr. Ewy, thanks for being here this morning. It appeared that some of these requirements are pretty restrictive but you're telling me that the owners

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and the applicants are agreeing to these.”

**Mr. Ewy** said, “Briefly, when we made the application, obviously we knew this was a very specialized request, one that would otherwise not be very acceptable to neighboring property owners. So we walked in the door at the Planning Department with a series of conditions that we were willing to live with and restrict the property with. At the time, the Planning Department came back with a recommendation of denial. We pulled that off the original agenda so that we could come back and expand upon these conditions, again in an effort to try to make this a little more palatable to staff. Ultimately, we came up with these conditions that the Holzmanns are willing to live with.”

**Commissioner Gwin** said, “Okay and so the conditions came from the owners and with your assistance, then primarily?”

**Mr. Ewy** said, “That’s correct.”

**Commissioner Gwin** said, “Okay, thank you. That’s all I need to know. Thank you.”

**Chairman Sciortino** said, “Okay. Any other questions of this applicant? I agree with Commissioner Gwin. These . . . I commend the applicant. I mean, these are very restrictive measures that they’re willing to do and the property looks like a farmstead to me. The sales are being done inside the building, right? There’s not a bunch of stuff laying around the outside. It says here, ‘contained within the existing building and shall not be expanded’. So the retail sales are within that structure.”

**Mr. Ewy** said, “That’s correct. As a matter of fact, the elevation here, the western elevation of this building that you see right here is approximately 800 square feet of sales, out of a 3,200 square foot building so it’s a very small portion of the front portion here of that particular building right there.”

**Chairman Sciortino** said, “All right, thank you. Is there anyone else that feels the need to visit with us about this item? Okay. Well, Commissioners, I will just tell you, to me I think the applicant has done a pretty darn good job here. I’ll entertain a Motion on this.”

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**Commissioner Gwin** said, “Well, I’ve read through it. It does seem a shame that you have to go through the zoning change to make what seems to be a pretty minimal problem here, but being that that’s the way it comes to us I’m prepared today.”

**MOTION**

Commissioner Gwin moved to approve, subject to platting within one year and the provisions of Protective Overlay District #114, direct staff to prepare an appropriate resolution after the plat is approved, and authorize the Chairman to sign.

Commissioner Norton seconded the Motion.

**Chairman Sciortino** said, “Just for the agent, please just one more time, the applicant is agreeing to all of these restrictions that we have on here? Is that correct? A simple yes will be fine.”

**Mr. Ewy** said, “Yes, sir.”

**Chairman Sciortino** said, “That’s all I need. Okay. I have a Motion and a Second. I don’t see that there’s any further comment. Clerk, call the roll.”

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, “Now, I believe . . . So this item is approved. Didn’t you say that . . .”

**Commissioner Winters** said, “I think Commissioner McGinn is here.”

**Chairman Sciortino** said, “Commissioner McGinn is here, so we can call . . . Now let’s go back to Item F-1.”

**Commissioner McGinn arrives at 10:05 a.m.**

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1. **CASE NUMBER CON2002-00021 – CONDITIONAL USE TO ALLOW A RURAL HOME OCCUPATION FOR VEHICLE REPAIR ON LESS THAN 20 ACRES ON PROPERTY ZONED “R” RURAL RESIDENTIAL, GENERALLY LOCATED NORTH OF 69<sup>TH</sup> STREET NORTH AND K-96 (7260 NORTH 135<sup>TH</sup> STREET WEST), WITHIN THE COLWICH AREA OF INFLUENCE. DISTRICT #3.**

### **POWERPOINT PRESENTATION**

**Mr. Miller** said, “This is a request for a Condition Use. The property is located north of 69<sup>th</sup> Street and east of 135<sup>th</sup> Street. It’s enclosed in black here. It’s K-96 highway, 135<sup>th</sup>, 69<sup>th</sup> Street. Here’s the application area. What he is seeking is a Condition Use to allow a rural home occupation for vehicle repair, including transmission repair. And based on the Minutes, the applicant’s agent indicated that they do transmission repairs . . . Well, what it said was, ‘More than 15 transmissions per month’, so we don’t know exactly what the upper end, we just know it’s more than 15.

The zoning code permits vehicle repair within an enclosed structure with no outside storage or vehicles or parts as a rural home occupation if they can meet these certain standards. One of those is that the application area is 20 acres in size or larger, that the home occupation is located further than 600 feet from an adjacent dwelling without a home occupation, that the floor area of the home occupation must be equal to the floor area of the principal residence or up to 3,000 square feet, whichever is greater. That no more than two non-resident persons can be employed as part of the home occupation, that the home occupation cannot create noise, vibration, dust, those kinds of things that would be a detriment to nearby properties and that the premises may not be altered to change the residential character of the property.

In this particular situation, the application area is 5.01 acres and the code does allow that if you do have 5 acres then you can apply for this Conditional Use and vary some of these standards. And the particular case that we’re reviewing here today, there are two residences without home occupations, at least as far as staff is aware, that are located within 600 feet of the applicant’s proposed home occupation. That would be the home occupation there, there’s a residence there and a residence there and using our little map-wise system, one of those is about 286 feet away and the other one is about 268 feet away, so it’s well within the distance.

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In addition, the applicant . . .”

**Chairman Sciortino** said, “That’s the applicant’s home, is it not?”

**Mr. Miller** said, “Right here, yes. This is the site, this is the applicant’s home. He’s got a couple of accessory structures and then, it’s hard to see from this photo, but the actual accessory use would be back here in the back, that if you add up the accessory buildings that he has on site, he has approximately 3,489 square feet of accessory use. Now the principal building that he proposes to use for the Conditional Use is 1,800 square feet and staff’s understanding that if this is approved, he will not use those other buildings for his transmission or vehicle repair, so that would get him underneath that 3,000 square foot maximum that the code requires.”

**Chairman Sciortino** said, “And he’s agreeable to that?”

**Mr. Miller** said, “That’s my understanding. The application area is located with the equus beds, Ground Water Management District #2 and overlies the equus beds aquifer and we’ve gotten the usual sensitive area comments that we generally get when we send notices out to the equus beds people.

Surrounding property, this is the property to the north, to the south. You can see that the main road here is an unpaved gravel road. Eastward, to the west. Properties surrounding the site are all zoned ‘RR’ Rural Residential and is either used for agricultural purposes or is large-lot residential use.

Staff has recommended denial of this and it did go to the Colwich Planning Commission and they reviewed the case and they also recommended denial, citing neighborhood opposition. Their denial triggers a unanimous vote requirement to overturn their recommendation. That’s why it was important to have all five commissioners here before we hear it. The staff report does indicate that there was an excess of 20% of neighborhood protest. We did receive letters that would have approximated 27% protest. However, those were not sent through the Clerk’s Office and one of them was unsigned and so those protests by the actual neighbors, as far as written protests, do not count. Plus, this unanimous vote requirement is a more strenuous hurdle anyway, but we did want to let you know we did receive three letters but, for various reasons, they don’t count towards the official written protest.”

**Commissioner Winters** said, “And Dale, just to interrupt for a second, if I may, if those people are here, we’re probably going to let them talk to us, so in a sense the technicality of their protest doesn’t count but the fact that they want to comment, they certainly are going to be able to do that.”

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**Mr. Miller** said, "Yes, certainly their comments would be taken into consideration because the letters were included in your packet and you would have had a chance to review those anyway."

MAPC recommended denial 6 to 4, citing staff findings. There were neighbors who spoke in opposition, citing introduction of commercial uses into the area, potential pollution from fluids from the vehicles or transmission repair. And one neighbor indicated that there were several cars that were regularly stored outside. As you know, in rural home occupations of this type, outside storage of this type is not a permitted activity.

If you decide to approve this, there are nine conditions that are cited in the staff report as being appropriate for this, and I won't go through each one of the nine. But it is my understanding that the applicant is agreeable to those nine conditions. And with that, I would try and answer any questions."

**Chairman Sciortino** said, "Well, I have just one. You had indicated one of the complaints was introducing commercial into the area. And I took it upon myself to drive that. Isn't there . . . There's commercial in that area. What's the sod farm or that grass farm or something?"

**Commissioner McGinn** said, "Krammer Grass Farm."

**Chairman Sciortino** said, "Yeah, isn't that right close by there?"

**Mr. Miller** said, "Well, I don't know what the distance would be. In terms of just the immediate area . . ."

**Chairman Sciortino** said, "Okay, I guess the definition of area."

**Commissioner Winters** said, "It's a mile away."

**Chairman Sciortino** said, "And I couldn't hardly even see Colwich. I mean, the sphere of influence is three miles. They've got to be right on that three mile line or something, because there's nothing out there."

**Mr. Miller** said, "Yeah, I think if they were possibly another 600 feet north, they would not been in their zoning area of influence."

**Chairman Sciortino** said, "Okay, all right. Well, we do have some questions. That's all I had right now. Commissioner Gwin."

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**Commissioner Gwin** said, "Let me go back. Did I hear you say at some point that . . . something about only two employees?"

**Mr. Miller** said, "Yeah. They are permitted to have two non-resident employees, is my understanding."

**Commissioner Gwin** said, "Without the zone change?"

**Mr. Miller** said, "As part of a rural home occupation."

**Commissioner Gwin** said, "Rural home occupation, okay. All right, thank you."

**Chairman Sciortino** said, "I don't think we have any other questions right now, Dale. Is there anyone else here or agent or applicant or someone. This gentleman looks vaguely familiar to me."

**Mr. Bob Kaplan**, agent for applicant, 430 N. Market, Wichita, Ks, greeted the Commissioners and said, "Let me bring a little different perspective to this matter if I might. I have a rather unusual problem with this application and the handling of it that really is collateral to the merits of the application and what I would like to do and I won't take long to do it, is give you a quick orientation on the area, in addition to what Mr. Miller showed you. But my basic issue that I want to discuss and I don't like to come up here each week and indicate that it's distressing to me but it is distressing to me in that this case and the treatment of this case, we did not try land use. What we tried was the land user, Mr. Jett, and that bothers me a great deal and I'm not expecting Mr. Euson or Mr. Miller to stand up here and speak on behalf of my client, but I certainly would expect them, if asked, to confirm that this hearing centered on Mr. Jett and on Mrs. Jett and on previous Conditional Uses for a dog kennel, on failures to comply with building codes, on inaccuracies in building permit applications. This was a case of very, very, very poor case management by Mr. Jett. I was not in it and Mr. Jett has the responsibility for it and he can't deny his responsibility for it because he's the owner. And there were a lot of mistakes made which essentially resulted in the construction of a building and the operation of a business before the zoning was authorized.

Now that business had been there for four to five years and he had operated as a home repair, his vehicle repair business, which he does by himself with one single part-time employee and that's all he wants. He is limiting it to 1,800 square feet, so there are inaccuracies or misunderstanding in the staff report about the number of people he wants and the size of the structure.

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Let me just give you a quick orientation, because there's some things here you need to know. On this chart, on my board, this is the Jett property right here, this is a five-acre property. When you looked at the aerial, these are the two mobile homes across the street. These people initially didn't object. One of these folks, subsequently, a daughter of one of these residents subsequently wrote a letter of objection. The primary objection comes from this gentleman in this area, which he's an eighth of a mile. He clears the 600 feet and a relative, who is a non-resident, owns this property.

This whole area is owned by Shell Oil Company. I'm going to show you another drawing in a moment. You can see it on the aerial down here. You can't read my comments on it. Comments we made were early on about these people who were okay with it. This is Mr. Tauber's home. I'm sure he's here. That's this home here, down here on the aerial. There's a lot of room around here.

This whole area, all of this acreage, 50 to 55 acres, is owned by Shell Pipeline. The problem is, and I'm going to show you on the other drawing I'll locate the pipeline, because there's litigation. Koch Chase has a . . . I assume it's a high-pressure pipeline generally in this area. I've got a detailed drawing I'm going to show you. That pipeline sustained a major, major rupture and this entire area is polluted with the leakage from that pipeline. This is the subject of litigation. I'm not representing Mr. Jett. He's represented by Mr. Randy Rathbun, who is an expert in environmental law and is representing him in regard to this and that's ongoing litigation. The point . . ."

**Chairman Sciortino** said, "Mr. Kaplan, if I could interrupt for a minute, the Clerk is saying we're not picking up your voice, since you're . . ."

**Mr. Kaplan** said, "I'm sorry. I apologize. The point of the exercise, Commissioners, is that there's going to be no development in this area. It's already polluted. You can't use the water now. It's not septic tank pollution, it's not water well pollution. It's a pipeline rupture that presumably, at least it's the lawyer's position, that nothing has been done about it and you're going to see . . . Let me go to a little more detailed drawing. I'll try to do this very quickly. This second board shows the Jett property. Again, the same property you see here. This is the approximate location of the pipeline. The two homes across the street that Mr. Miller alluded to are here. Mr. Tauber's property is in this area and this area . . . These round circles, these are monitoring wells that Koch has placed on the Jett property, with the Jett's consent, and they're monitoring the pollution. They've got three wells just on his five acres because we have a very, very serious pollution problem out there and I don't know when or how it's going to get resolved. I'm not responsible for that litigation, but there is pending litigation.

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These are a little better, a few better views of the Jett property and I think that's large enough that you can see them. He keeps a nice place. He's got a nice looking home. This is a view, looking south from 135<sup>th</sup> Street, which it borders on, west. Here's your view, looking north from 69<sup>th</sup> Street to the south and then some even better views of the property. There's looking from the east. This is the Jett homestead. His building is down here at the end and off here you see the building that's the subject matter of this thing, clear back here in his field, to the south of the house. This is the building that he built.

Now, what happened in this case, and I'm going to have a request of you. I'm going to have a request of you, whether you see fit to approve it or you don't, I am going to have a request of you because this . . . Ladies and gentlemen, it just wasn't fair. Mr. Jett got tried. He hired a contractor and you have some correspondence in the supplemental book which I gave, from other people who used this particular gentleman. Now it's not my intent, nor is it my job, to stand up here and criticize the contractor. But the contractor, when the building permit was made, and I told Steve that he has to take responsibility for it. It's his contractor, it's his agent and it's his responsibility. And I told Steve, I said, you did an awful bad job of case management in this case and you got yourself in a terrible, terrible predicament, before I came into the case.

The building permit is inaccurate. The building was not to code. There were code violations, a number of them. Mr. Jett was the subject of discussion about a previous Conditional Use that his wife had obtained to have a dog kennel, which never came to fruition because she could not afford to meet the conditions and we talked . . . And you don't have a verbatim transcript, unfortunately and you can't get the full sense of what happened. It's kind of one of those you had to be there kind of things. I got a lot, a lot of questions from the podium, from Planning Commissioners saying, 'But Mr. Kaplan, look at the building permit, look at article 3, look at this, look at that' and I've got to admit they're wrong. They're definitely, definitely wrong.

But we did not try . . . I'm going to repeat it because it's important, we did not try, at the advisory board level, we did not try land use. We did try the land user and although the motion was made on staff comments, if you looked through the . . . if you had an opportunity to look through the Minutes, such as they are, that you had, you saw question after question after question which did not deal with the merits of this application. It dealt with Mr. Jett and his builder and his code violations. Now the only thing I was able to do, in the short time that was available to me . . . I don't know if Mr. Wiltse is here. I did get with Glen and Mr. Jett and we straightened all that up. And if Mr. Wiltse is here, he will confirm to you that we have brought everything into compliance. We had to do a lot of rebuilding and a lot of reconstruction on that building, things that shouldn't have happened in the first place, but they did and that was the contractor and that's Jett's responsibility and if you ask him, he's going to say yes, he didn't do a good job of it. But they're not land use considerations and what I'm going to ask you to do today is put those collateral matters out of your mind, because they should not have been considered. I think Mr.

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Euson will tell you that. I think Mr. Miller will tell you that and this case should not be decided on whether or not you feel that Mr. Jett played by the rules or didn't play by the rules, because that's not legally relevant to the land use issue. Now it certainly will become very relevant to the land use issue if this application is approved, subject to all the conditions and we agree with them. That means no outside storage. He wants one part-time employee. He wants only 1,800 square feet and if he violates those conditions, then his Conditional Use is subject to being forfeited.

Now what I'd like to do . . . What I'm going to tell you is that if you feel that it is simply too much to expect this Commission to reverse both the Colwich Planning Commission and the Chairman is exactly right. They're way, way off on the other side of the interstate. They're in, technically, in the area of influence but how this could possibly effect the community of Colwich, it can't. If you feel that you cannot reverse the Colwich Planning Board. If you feel that you cannot reverse the Metropolitan Area Planning Commission, and if that is your attitude on this case, I'll understand it but do one thing for me. Give me a fair shot at this. Refer this back to Colwich, with my new information. Let me correct the inaccuracies in the report.

Just as you heard last week, Mr. Jett sat by himself in a planning board meeting, didn't know what was happening to him. I would like to go back. I would like to see it approved. If it can't be approved, then I would like to see it go back, not to the Planning Commission, but I'd like to have it go all the way back to Colwich. I would like an opportunity to present up there and I would like an opportunity to get the contractor in there and I'd like to explain to that board up there why this case got in the posture that it did and then I would like to go back, with a little legalese to the Planning Commission members and tell those ladies and gentlemen, let's talk about land use and let's not talk about Mr. And Mrs. Jett and all their violations. Because it was not an appropriate hearing and when you take out of the Minutes all of those comments, you really do not find, I do not believe, substantial basis for denying it.

As far as those environmental issues are concerned, he primarily does transmission repair. Those transmissions don't come in in cars. They come in in boxes. They're shipped in, repaired and shipped out. He does do some vehicle repair in the area for the farmers, farm equipment, and for neighbors. There is some vehicle repair. I don't deny that but the majority of it, he's basically a

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transmission rebuilder. He does have a contract with Safety Kleen. He uses . . . Whatever oils and fluids, tranny fluids, motor oils, whatever fluids he has, he is now and he has been, for many years, with Safety Kleen. Those fluids are picked up and properly disposed of. We do not have an environmental case here and every time we have one of these cases in the area of the equus beds we're accused of polluting. That is not the case. He has no floor drain. He has no mud traps in his building. It's in containers and Safety Kleen, you all know, is a very bona fide organization that takes care of these things.

So let me conclude with just a couple of comments. We've been here . . . It's interesting, he has been here four years and he has been doing this same thing since 1998, with absolutely no objection from anyone. He was doing it in his garage. He's got a two-car garage, as you can see on the photo. And then he decided that he would remove to a building, which he felt was an enhancement of the whole situation, not a detriment, but an improvement from working in his garage.

He did go up to Planning. He went up by himself. He worked with a staff member. He came away with the impression that this was not an issue. He made out his own application, not very completely, I might add. He hired a builder, who obtained a building permit that he signed, an application that he signed. It was wrong and he put himself in a situation, when coupled with what they felt . . . people referred to previous Conditional Use violations. Well, you know, there's a lot of things out there that are maybe not in compliance. I'm not really interested in talking about that. I know Mr. Tauber is here. I'm told that he runs an ostrich farm just to the south, as a home occupation. I don't think that meets the home occupation conditions either but I'm not up here to talk about that. I'm up here to talk about my client. This is not going to be any huge detriment to this area because he's got a two or three bay garage. Two-bay or three-bay? Four-bay garage, which he pulls vehicles in. He cannot have, under the CU, any outside storage at all. He can have only the 1,800 square feet.

So I'm going to ask you to give me . . . I'm going to ask you to give me fair, as I know you will, give me fair consideration on the land use issues and let's not talk about all these collateral issues that we got hammered with that Mr. Euson will tell you were inappropriately discussed. I think he will. I think Mr. Miller will tell you the same thing, because I'm very confident that that's the law.

And if you feel that I'm expecting too much from you today, give me an opportunity to go back to Colwich and see if I can't straighten this out, talk to those folks up there again, bring in my new information which I've given you, bring in my comments about the builder, bring in my letters of support, bring those people into Colwich who support this and who support Mr. Jett who can give him a more accurate picture of it. And let me go back and do that. If I come up a second time, you still don't see fit, then I've had a fair hearing. But at this point it's really been prejudiced with a lot

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of inappropriate discussion, inappropriate evidence that should never have been in this case in the first instance.”

**Chairman Sciortino** said, “Thank you, Mr. Kaplan. I don’t see that there’s any questions.”

**Commissioner Winters** said, “Mr. Chairman, I may have some questions later, but I’m interested in hearing what the rest of the comments are before I’d ask just a couple of questions.”

**Chairman Sciortino** said, “Again, it is our policy, although it isn’t requested, we would like to ask if there’s anyone in the audience that would like to speak to this item, either for or against? Yes, sir. Please come on up. You might want to get a little closer to the mic, when it’s your turn. I guess you can draw straws to see who goes first. And please, if you would, give your name and address and we’ll try to give you as much time. We try to limit it to five minutes, but if you need some additional time, I think we’ll be able to grant that for you.”

**Ms. Teriesa Tauber**, 13420 W. 69<sup>th</sup> Street N., Colwich, Ks., said, “My husband, Mike Tauber, we actually are the ones that owns the 20 acres, that corner, 69<sup>th</sup> and 135<sup>th</sup>. We did build our home closer to the east side to have every intension, at one time, to section off 10 acres to sell at a later date.

Twelve years ago we purchased 20 acres, out of the 70 acre plot. As a condition to buy, we requested certain restrictions be applied to the whole 70 acres, to protect our future land value. Several restrictions were agreed on and a document signed. The land up for conditional zoning change is part of the 70 acres under restriction. A copy of the document is included in the report you received. One of the stated restrictions is that no business buildings be constructed on the 70 acres. We request the restrictions be enforced. Mr. Jett was fully aware of this document and its restrictions long before he started his transmission business.

When he applied for the building permit, the building in question, he stated usage would be for a hobby and residential storage. In the comments section, it states no business use. The building now contains commercial hydraulic car lifts and is definitely being used as a car and truck repair. We’ve been aware that Mr. Jett has been working out of the two-car garage, but believed this was an on the side job, not a fully functional transmission shop. With the size of the new building, the number of cars sitting around his home and the traffic, it is very obvious Mr. Jett has a full-time transmission business.

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Mr. Jett also owned a transmission shop in Hutchinson called Jettco. It seems to us, he would be very familiar with zoning rules and regulations of setting up a business of this type. On the average, five to fifteen cars around the five-acre property awaiting repair. A couple of cars sat at the back of the five-acre lot for six months or more. Now cars are hidden in trees not far from his home.

We have great concerns on how the hazardous waste is being disposed of. What is being done with all the waste fluids, transmission fluids, cleaning fluids? What about the replaced parts? Where do they go? How can we be assured the waste will be disposed of appropriately? Will this be done with the KDHE rules and regulations and who will monitor these restrictions?

UPS and auto part delivery trucks make regular stops to this business, plus 18-wheel tractor trailers maybe once or twice a week. This is a dead end, dirt road.

After reading the MAPC's staff report, we have greater concerns about zoning requirements being kept regulated. Land owners on the north, south and west of the Jetts have submitted letters of concerns or is outright in opposition to the proposed change. If this is approved, it will just open the door for more of the same. We ask you to please consider our concerns and the facts presented to you in the MAPC report. We believe this would negatively impact our land and house selling prospects. We are completely opposed to this proposed change. Thank you."

**Chairman Sciortino** said, "Thank you. I think we have a question."

**Commissioner Winters** said, "I don't have a question of her. I have of Rich."

**Chairman Sciortino** said, "All right. We don't have any questions at this time. Thank you very much."

**Commissioner Winters** said, "I have a question of Rich about part of that. Ms. Tauber mentioned covenants on this property of restrictions. Is Sedgwick County involved in covenant enforcement, or does this have an application that we need to think about?"

**Mr. Euson** said, "Commissioner, I'm not familiar with those covenants, but assuming that they are the standard restrictive covenants that are filed of record and that don't involve the County, and I think that's what is being said here, they're a matter of private contract and they really have no relevance to the issues before you in the zone change."

**Commissioner Winters** said, "So it's almost like a homeowners' association that has a number of covenants of what can happen in that neighborhood. Code Enforcement or Sedgwick County is not involved in the enforcement of those covenants. Is that correct?"

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**Mr. Euson** said, "That's correct and to the extent that they would try to restrict the land use, they're just not relevant to your decision."

**Commissioner Winters** said, "Okay, thank you. That's all I had."

**Chairman Sciortino** said, "Let me ask a little further. Is this a situation where we can't, by law, consider that covenant when making our decision of land use? Is that something that we're not permitted to consider?"

**Mr. Euson** said, "Well, I suppose that maybe we'd have to see that covenant in every individual case. But assuming that this is a traditional, standard restrictive covenant that does not involve the County, I would say that whatever it says in it is irrelevant to your determination."

**Chairman Sciortino** said, "All right, thank you."

**Commissioner Winters** said, "That's all I had."

**Chairman Sciortino** said, "Is there anyone else now here? I know there's one gentleman for sure has indicated that he wishes to speak. You all are going to have to work that out amongst yourself who wants to speak next. I'm just going to keep it open until I see that no one else wants to come and visit."

**Mr. Terrance A. McClure**, 6900 N. Maize Road, Maize, Ks., greeted the Commissioners and said, "I'm here speaking on myself and my brother, Eric A. McClure of Brownsville, Texas. We both own five acres a couple of hundred yards to the north of the Jett property."

**Chairman Sciortino** said, "Could we possibly get a map or something, one of these slides or whatever, Dale that we could make it a little easier to understand exactly where the McClure's . . . So you're to the north of that red square. Is that correct, sir?"

**Mr. McClure** said, "Yes, my brother owns the first five acres, starting right at this point and I own the next five acres."

**Chairman Sciortino** said, "Okay, got it. Thank you. And just feel free to take your time and take whatever time you need to explain to us your position."

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**Mr. McClure** said, "First of all, my brother intends to build a home on this property. Right now it has a mobile home on it that belongs to another person. It's a very complicated situation, which has no effect on this. But the point is we both own five-acre tracts there, which we both may very well build homes there. We are against this Conditional Use change for obvious reasons. It's going to decrease our property value and we don't want the traffic here and all the related stuff.

Mr. Jett has not met any of the requirements. There's supposed to be 20 acres. They haven't met the requirements on the building. Now they've backtracked and may be legal, I don't know. But they definitely don't have 20 acres there, which it says you're supposed to have for a Conditional Use. We are against it. There's no getting around it.

As far as going back to Colwich, I went to the Colwich meeting. They had a fair hearing at the Colwich meeting. I had to go to that and I spoke there. I've gone to the Metropolitan Planning Commission. I've had to appear there and speak. There's no use putting us back through that again. This is a done deal. They have not met the requirements, they're waffling on all this nonsense that has nothing to do with the fact that they don't meet the requirements and I see no reason to put us . . . going back through, going to another meeting, then going to the Metropolitan Planning Commission again.

Your own Metropolitan Planning Commission has said that this should be denied. They know what they're doing and there's a . . . it's obvious this should be denied. Now all we're asking you to do is do what's right here to protect the property owners around here. It's your responsibility to protect us and all we're asking is for you to do your job and to deny this request.

Now, I don't know what else to say. Everybody has denied it. They've had a fair shot. This gentleman got up before the Metropolitan Planning Commission and had his say and they denied it for a very good reason. And my brother has written you a letter there. He's in the automotive repair business. I don't know if you have those forms there but we want this denied and it's your responsibility to protect us and so I ask you respectfully to do that. Thank you very much."

**Chairman Sciortino** said, "Sir, there is a couple of questions of you, if you wouldn't mind. I have to admit, Commissioners, I don't know in what order, so I'm going to go from my right to my left. Commissioner McGinn."

**Commissioner McGinn** said, "That's something different."

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**Chairman Sciortino** said, “Just an equal opportunity, Carolyn.”

**Commissioner McGinn** said, “Yes. You mentioned several times ‘not met the requirements’. Could you be specific about those requirements?”

**Mr. McClure** said, “Well, they are supposed to have 20 acres to start a conditional use permit like this. He doesn’t have the 20 acres. Now there may be . . .”

**Commissioner McGinn** said, “Okay, 20 acres and what was some of the other requirements?”

**Mr. McClure** said, “Yes, along with the other requirements, as far as the outside storage. And as far as running this deal illegally for some reason makes it now okay. I don’t see that that has any . . .”

**Commissioner McGinn** said, “So, the two requirements that you feel have not been met are the 20 acres and the outside storage?”

**Mr. McClure** said, “Yes, it was stated at one point. I don’t remember where, I think it was Metropolitan Planning Commission, but this was originally set up so that if a farmer who had several . . . well, at least more than 20 acres could start a small repair business to supplement his income and so the requirement was that you must have at least 20 acres. Well, you know, obviously we don’t have this here. And secondly, it’s just not appropriate here and I mean, I don’t know what else to tell you.”

**Commissioner McGinn** said, “Okay, thank you.”

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

**Commissioner Winters** said, “Yes, I just have one question. Is your property north of there, is it involved in the pipeline break?”

**Mr. McClure** said, “My brother’s property is. His . . . There’s a . . . It actually polluted a circle from the break out and it’s not on my property up there. It is into my brother’s property not too far. About, I would say, from the corner, from the road, it’s a radius of probably 150 foot.”

**Commissioner Winters** said, “Into his property.”

**Mr. McClure** said, “But I don’t see that this particular pollution deal has no bearing on the case.”

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**Commissioner Winters** said, "That's all I need to know."

**Mr. McClure** said, "Well, I'd like to say one other thing here. It was brought up that . . . His lawyer said that no one is going to build a house on this property because it's polluted. That's nonsense because my brother intends to do that right there on that first five acres and I may very well end up building one on my five acres there. So, that's not a valid argument either."

**Commissioner Winters** said, "All right, thank you very much."

**Chairman Sciortino** said, "Just one second, sir. You're a very popular person here this morning. Commissioner Gwin."

**Commissioner Gwin** said, "Well, Ms. Tauber indicated that this is a dead end street. Now is this your access to and from your property or do you access it some other way?"

**Mr. McClure** said, "Well, right now I have to go in on my brother's property and access my property because they closed the County road there but there's no reason why that the road couldn't be reopened, if I decided to build up there."

**Commissioner Gwin** said, "But currently you . . . it only goes as far as your brother's property? The road only goes as far as your brother's property, is that what you said?"

**Mr. McClure** said, "Yes."

**Commissioner Gwin** said, "Okay, all right. That's all I have. Thank you."

**Chairman Sciortino** said, "Okay. Thank you. Anyone else here in the audience? Yes, sir. Please come forward. Again, just for the record, your name and address and, if you can, try to limit it to five minutes."

**Mr. Mike Tauber**, 13420 W. 69<sup>th</sup> Street N., Colwich, Ks., said, "I don't have too much. And I don't have any fancy pictures or anything like he's come up with here but I have a few pictures that I have taken showing the amount of cars and the semi-tractor trailers."

**Chairman Sciortino** said, "If you would like to bring those forward. We can't quite see that far, but if you . . ."

**Mr. Tauber** said, "Give them to you?"

**Chairman Sciortino** said, "Yes, and we'll give them back to you."

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**Mr. Tauber** said, "That's all I had."

**Chairman Sciortino** said, "You just want us to take a look at the pictures? All right. While we're looking at those photos, is there anyone else in the audience that would like to speak for or against this topic. If you'll just give us a few minutes to look at this pictures here.

While we're looking, Mr. Euson, could you confirm the one allegation that the individual that preceded Mr. Tauber about for a Conditional Use it's required that 20 acres is a correct statement?"

**Mr. Euson** said, "Commissioners, it's really kind of a mixed statement and I may ask Dale Miller to help me with this but here's the way I understand it. In our zoning code, we have home occupations and rural home occupations. And you can have a rural home occupations, as Dale explained to you at the beginning of the meeting, automatically, if you comply with certain conditions and that is 20 acres and next to a major road and certain other conditions that don't come immediately to mind.

You can have a home occupation on five acres, if you get a conditional use permit, and that's what you're being asked to do here today. I think what Dale was suggesting to you earlier was that if this applicant had 20 acres, he could probably qualify to do this by right."

**Chairman Sciortino** said, "He wouldn't need a zone change."

**Mr. Euson** said, "He wouldn't need a zone change, is my understanding. But since it's only five acres, he has to get a Conditional Use permit."

**Chairman Sciortino** said, "The other thing is the photo does indicate . . . This one photo does indicate some outside storage and again, the allegation was that you couldn't have outside storage on a Conditional Use. Someone tell me . . ."

**Commissioner Winters** said, "I'd like to ask some questions about that. I'd be glad to pursue that, if you would like to."

**Chairman Sciortino** said, "Sure, go right ahead. Commissioner Winters."

**Commissioner Winters** said, "Mr. Kaplan, could you come back for a second? And let's talk about this outside storage and screening for a moment. In the backup from the Metropolitan Area staff, they indicated that if we were to seriously consider this, that screening would become a part of

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this issue. Can you talk to us, from the applicant's viewpoint, on what he thinks about screening and this outside storage issue."

**Mr. Kaplan** said, "Yes, sir. I have a commitment, I have a commitment from Mr. Jett that he will appropriately screen the property. That we will plant mature landscaping and make the property physically attractive by the use of natural screening. We are prohibited, and the photos you have and some of the comments that we were met with that I discussed earlier, Commissioner Winters, were things that preceded the conditional use application. If approved, he will not be permitted outside storage and he has accepted that condition. So there will be no exterior storage of vehicles or anything else under this conditional use. That is a condition that has been accepted and that will be prohibited. Has it happened prior to today? Yes, it has. But will it happen after the conditional use? Legally, it will not and if he is in violation, then we turn back to Mr. Wiltse. But we will screen, we will not have outside storage.

I hope you had a chance, Commission, I know this is not a direct response to your question, but in the booklet that I provided we did do work with Kansas State University and you will find some geological information. You will find out that we require no licensing. That we do not have a hazardous material issue. And if you have a chance to review the book that I submitted, tab three is the letter from K- State University and some of the subsequent, tab six . . . tab five, environmental compliance and probing services. We did do quite a little bit of work to assure this Commission, insure the planners that there is no environmental issue here."

**Commissioner Winters** said, "And it appears from this letter that Nancy Larson, with K. State Extension has been out and visited Mr. Jett's facility and Mr. Jett is complying with all the recommendations that she has made?"

**Mr. Kaplan** said, "That is correct, sir."

**Commissioner Winters** said, "All right, back to the screening again. You mentioned trees, so the applicant's proposal would be to screen part of this property with some mature trees, and we're talking trees five, six, seven feet tall or more?"

**Mr. Kaplan** said, "Yes, sir. We will certainly do that and be certain that that is screened from the road and screened from public view. And we'll do several sides of the building. We'll do it. That is not a major obstacle and we can make that a condition. Under the conditional use, you have the privilege or the luxury if you will of imposing conditions and if this Commission were to see this favorably and impose landscaping conditions and certainly we will be required to comply with those."

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**Commissioner Winters** said, “All right. One more time, the home occupation has the availability for two people to be there and there will not be more than two people and I believe I heard you say now there’s only one. Is that correct?”

**Mr. Kaplan** said, “I believe, Commissioner Winters, it’s the owner plus two. I believe that’s correct, under the conditional use ordinance. We will have the owner plus one part-time assistant and that can also be a condition, the owner plus only one part-time employee, that can be a condition. We have no need than any more help than that.”

**Commissioner Winters** said, “All right. I have a question for Mr. Glen Wiltse. That’s all for Mr. Kaplan right now. Glen, you or your people have been out to see if this building now meets codes. I know that we’ve got in this building backwards, upside down practically. But what’s your take on this building, as it is out there now?”

**Mr. Glen Wiltse**, Director, Code Enforcement Department, greeted the Commissioners and said, “I talked with staff numerous times about this and to the best of our knowledge, the building is in compliance with code at this point. Typically, we hold off on enforcement of any additional things, like any outside vehicle storage or anything like that until a conditional use is either approved or denied. And we may go back out, afterwards, just to verify one more time.”

**Commissioner Winters** said, “But two lines here, two more questions. As far as the construction of the building, the wiring, etcetera, etcetera, you believe that it complies with all of our building codes?”

**Mr. Wiltse** said, “To the best of our knowledge, yes.”

**Commissioner Winters** said, “And if, in the future, on conditional use permits, if someone fails to comply with the restrictions and the rules and regulations, what can you do? Can you revoke conditional use permits?”

**Mr. Wiltse** said, “There’s provision in there for revoking the CU. There is . . . A typical process, a lot of times, is to send violation notice and then if there’s a refusal to make corrections, that’s typically one we would start a process for revoking.”

**Commissioner Winters** said, “Okay. But it is possible, if someone doesn’t follow the rules, to revoke a conditional use permit.”

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**Commissioner McGinn** said, “And what activates that?”

**Commissioner Winters** said, “Typically, a complaint. If we get a complaint from a neighbor, that’s when we start going out, looking at CUs.”

**Commissioner Winters** said, “That’s all I have at this time, Mr. Chair.”

**Chairman Sciortino** said, “I have a couple of questions. I went out yesterday and drove the area and I don’t know if I have it of you, Mr. Kaplan or of the applicant, but I saw a lot of cars parked out in the back and made the comment that it would be nice if they could screen that off so that that wouldn’t be seen by the public and now I’m being told that we’re going to have screening. But then also I’m being told that the applicant is not going to have any cars. So I’m trying to wonder why are we doing screening if there’s not going to be any cars? And I’d like to ask the applicant, just . . . I know right now . . . Mr. Jett, if you could come forward. I did notice a number of cars parked to the north side of your building, I assume awaiting some repair or what have you.”

**Mr. Jett** said, “A few of those cars are my personal vehicles, but I would be willing to move those to a storage area off location.”

**Chairman Sciortino** said, “Okay. But you do . . . presently, some of those cars are awaiting some repair. If you’re going to agree not to have those cars there, outside waiting repair, where are you going to put them?”

**Mr. Jett** said, “Pardon me?”

**Chairman Sciortino** said, “If you’re going to agree not to have cars stored outside waiting repair, where will you put those cars that are awaiting repair?”

**Mr. Jett** said, “I’ve made arrangements to place those cars in town, on a storage lot.”

**Chairman Sciortino** said, “Okay, but I mean you’re going to get a truck? Because a car without a transmission can’t drive. So you’re going to haul them some place to be stored and then haul them back to have the transmission put back in?”

**Mr. Jett** said, “If necessary I can do that but I think the facility is big enough to, as we work on the vehicles and they’re completed, then we can move them back and forth. It will just be a management thing. It would be nice if I could screen and then have some storage on site but if not

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then I will comply.”

**Chairman Sciortino** said, “But see, that’s the one concern I’m just expressing here. We’re talking about screening and I’m wondering why we’re even talking about screening if we’re not going to have any outside storage. If you have screening, how is anybody going to know that you’re in compliance? I guess, unless they get a big . . . I don’t know how they would be able to see behind the trees.”

**Commissioner Winters** said, “So is that a bad thing?”

**Commissioner Gwin** said, “To have screening, you mean?”

**Chairman Sciortino** said, “No, I think screening is a good thing but I’m trying to get my arms around if he’s going to agree to no outside storage, is that really what he intends to do, no outside storage. If he is agreeing to . . . If he’s really going to do outside storage, then I would prefer him not to agree that he’s not going to do it if he’s not going to comply with that.”

**Commissioner Winters** said, “And so thus we would not require any screening.”

**Chairman Sciortino** said, “There wouldn’t be any need for it, I wouldn’t think. I mean, that was just a question I threw out. Okay, I guess that’s all I had.

Dale, yes.”

**Mr. Miller** said, “Just a clarification. Outside storage is not permitted at all. The only way they could have outside storage is to go to the Board of Zoning Appeals and ask for a variance. They can’t have it screened. It’s not allowed at all.”

**Chairman Sciortino** said, “Screening isn’t allowed?”

**Mr. Miller** said, “Screening to hide the vehicles is not a solution to his outside storage. Outside storage is not permitted, as a conditional use for a home occupation.”

**Chairman Sciortino** said, “Okay, so if he does do it, then he’s in violation of the conditional use then. Okay.

Let’s see if there’s anyone else, Mr. Kaplan. I know you’re going to want to rebut. Yes, sir.”

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**Mr. Tauber** said, "I'm the one that filed the complaint to begin with and I want to know how am I going to know if he has all these vehicles that he says are his sitting around out there, how do I know when he has some that aren't his that are in for being repaired, If I'm the one that has to monitor him?"

**Chairman Sciortino** said, "You're asking us?"

**Mr. Tauber** said, "I'm asking anybody that can answer that."

**Chairman Sciortino** said, "I don't know the answer to that. Anyone else that would like to address us on this issue? Okay, Mr. Kaplan, do you have something?"

**Mr. Kaplan** said, "Very quickly. I appreciate the extended time I get and I will not take any more of it. We will not have outside storage. A complaint will result, a call to Mr. Wiltse's Zoning Department on South Seneca will result in an inspector and if there is a violation, then he risks the loss of his CU. The transmission work is basically done for dealers that ship them in. They come in, basically Mr. Chairman, shipped in and shipped out. They're generally not a part of an inoperable vehicle.

Vehicles that are inoperable, if there are any or he is tuning up or working on, he has off-site storage for those. The screening consent is simply to visibly screen this metal building so that people don't have to look at the building and the site itself, and we're willing to do that. We're not asking to do that and to hide vehicles. We will not store. His personal cars he of course is entitled to keep on the premises and if the neighbors feel that he's abusing that, they just simply make a call to Mr. Wiltse. Mr. Jett has got his share of attention."

**Chairman Sciortino** said, "Okay, thank you. Mr. Euson, do our present Code officers, say they got a complaint of Mr. Jett being in violation of something being done behind the screening. Do they have authority to go on the property to check it?"

**Mr. Euson** said, "They have the ability to observe that from a public location or other location that they're entitled to be on."

**Chairman Sciortino** said, "Would they have the authority to get an airplane and fly over to see it? Because I could see . . ."

**Mr. Euson** said, "Yes, they could probably do that."

**Chairman Sciortino** said, "Okay. So you're comfortable that there are ways that we could inspect

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it without violation of anybody's property rights if there ever was a complaint."

**Mr. Euson** said, "Yes, I am."

**Chairman Sciortino** said, "Okay. All right, fine. Is there anyone else that would like to address us on this item? Okay, I'm going to now limit the conversation to the Bench. Is there any further comment on this item?"

**Commissioner Gwin** said, "Just a question for Dale. Question for Mr. Miller. Dale, in looking at the backup, generally we have you know the staff report about what the case and all the background of this and petitions if there are any opposing it and certainly Minutes of MAPC. This one I did find unusual because in there were letters that dated back to 1991 and such. Were those part of the packet that was given to the Planning Commission and to Colwich and to others?"

**Mr. Miller** said, "I don't know whether they were given in the original packets that went out to Colwich or the MAPC. They came up as a result of trying to clarify the role of the earlier conditional use and what it allowed or what it didn't. There was some question, early on, that perhaps that conditional use permitted this use and so that's how they were . . . We went back that far trying to confirm or deny that that was the case."

**Commissioner Gwin** said, "Okay, well I was trying to make a connection between, you know, what this was and having to do with dogs and then having to do with transmission repair."

**Mr. Miller** said, "It only came up in the connection that there was some comment, initially, that the applicant thought that that original CU carried over to the transmission car repair work."

**Commissioner Gwin** said, "To this other type of home business. Okay, all right. Thank you. That's it for me right now. Thank you."

**Chairman Sciortino** said, "All right, thank you. Commissioner Norton."

**Commissioner Norton** said, "Did I understand that the building has hydraulic lifts in it. Did I hear that?"

**Mr. Miller** said, "The applicant can confirm, but when we were out looking yesterday from the

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road, it looked like there was a lift there. Maybe Glen's people have been out there."

**Commissioner Norton** said, "How many lifts are there? I'd like . . . Glen, could you?"

**Mr. Wiltse** said, "I'm trying to think back when I was out there, I believe there was just one or two and I don't know how many he's put in, if he's put any additional in. But they're like an electric type. They're not the old style that used to go into the concrete pits. They all sit right on top, the entire system sits right on top of the concrete floor."

**Commissioner Norton** said, "I'm seeing a gentleman out there telling me there's four."

**Chairman Sciortino** said, "Let's just ask the applicant how many hydraulic lifts do you have, sir? You have two? You have two electric lifts."

**Commissioner Norton** said, "And are these lifts for lifting just the transmissions you have brought in that you're working on or are they for lifting cars?"

**Mr. Wiltse** said, "They're for the entire car and that's . . . Typically, most shops use those now, because it gains access to everything from underneath."

**Commissioner Norton** said, "And would those be considered pieces of equipment for a home office business or for a commercial business?"

**Mr. Wiltse** said, "I've seen residential homes have some of them put in, in all honesty. They're getting the prices down to where I've considered one for myself if I had a little higher ceiling for just the stuff that I do, the hobby type stuff that I do. You can buy them for around \$2,500, some of them. So the prices are not real expensive anymore."

**Commissioner Norton** said, "That's all I have."

**Chairman Sciortino** said, "All right, thank you. Commissioner Winters."

**Commissioner Winters** said, "All right. I guess I'd make a couple of comments and then see if we can come to a conclusion today. You know, in the years I've been a Commissioner, I think we've really dealt with some zoning issues that were, I'll say significant. This one seems to be relatively small but I have spent as much time thinking and working on this one as any for quite a while. I've read everything that I could find in the record from MAPC, the letters that people have sent. Yesterday, we got a letter of support from a surrounding farmer that owns several hundred acres around that was in support, didn't think this would be a detriment to his property."

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So we've had a lot of input on this and I have I guess struggled with this one as much as any. I've driven out there three times, just to drive by, drive by quickly, spend some slower time and Mr. Jett has a very neat place. His house is very respectably kept in the front, so it's not something that I see as an eyesore.

The other issue that I've struggled with is the Colwich issue and that's the issue that's put us in the place of needing five votes to approve, if we would decide to do that. I usually depend very heavily on smaller communities and if one of them has a problem and thinks this will be a negative effect to their community, I'm very reluctant to pass on those.

But as I look at the overall map, large map of where this location is in comparison to the City of Colwich, it's a long way. It's almost at the three-mile and it's across the K-96 Interstate Highway. So I'm hard pressed to think that this is really going to be a negative impact on the City of Colwich. So, as I've thought again this morning and tried to analyze everybody's position and I understand the neighbors. I understand I think Mr. Jett's position. I'm ready to try to craft a Motion to override the recommendations of MAPC. If I get a second to that Motion, then I'd go into some detail about what backs that Motion up. If there is Commissioners who think that's a wasted effort, I won't do that, but I'd like to try to craft a Motion to override MAPC."

### MOTION

Commissioner Winters moved to override the findings of the Metropolitan Area Planning Commission and approve the request.

Commissioner Gwin seconded the Motion.

**Commissioner Winters** said, "All right. I believe that, you know, as we look at the character of the neighborhood, this is something that we need to be concerned about but our Uniform Zoning Code clearly recognizes the existence of home occupations and has a way that folks can apply for that conditional use and meet certain requirements and not be a major detriment to the neighborhood. I know, in driving around that area, I know that I'm not mixing up agricultural use with home occupation use, but I know that there are agricultural oriented buildings out there that are much larger than this building and probably doing similar kinds of activities in them, although not as a commercial business, but size-wise, there are a number out there that are pretty good sized. So

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again, automobile repair is recognized as a permissible rural home occupation, and I think it can apply here.

There is, I think, no specific information in the record that there's going to be a serious impact from noise, odor or traffic. I think there is evidence in the record that home occupation has already been operating at this location for several years and there's no evidence to show that what Mr. Jett has done up to this point has had a detrimental effect.

The evidence shows, particularly in the MAPC record, where Mr. Rathburn testified, that there is a significant contamination problem in this area caused by the Chase Pipeline, I believe was the company. And according to that record, it's going to be many years before there's any really home development in this immediate area surrounding Mr. Jett's property. So I think the type of work that Mr. Jett is going to be doing is not going to be any kind of environmental problem.

And when thinking about the safety and welfare and the general health of the public, as mentioned earlier, I think there's insignificant evidence that there's really going to be a detriment. I think probably there will be as much a hardship on Mr. Jett if this is denied and he is not allowed to stay in business.

Again, the record has shown that there is some neighborhood opposition. Some of those folks were here today but we've also had several letters of support. So I think there's both neighborhood support and opposition.

And I really do believe, in my viewing this property, I think it still does have a residential character to it, even though there is going to be a business in the back. So for those reasons, I'm going to be supportive of the Motion to override the recommendation of the MAPC."

**Chairman Sciortino** said, "Thank you, Commissioner Winters. Commissioner McGinn."

**Commissioner McGinn** said, "Thank you, Mr. Chairman. I don't know if this question is for Mr. Kaplan or for Dale Miller or for Glen Wiltse but the letter from Nancy Larson, from the Pollution Prevention Institute, which I know she's done good work and this has been a great program. The recommendation she's made, who watches to see if those continue, those best management practices continue? How does that work? Can somebody answer that question?"

**Chairman Sciortino** said, "We'll ask you, Glen, put you on the spot."

**Mr. Wiltse** said, "I have not seen the recommendations but I'm assuming that they're probably KDHE type regulations and recommendations."

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**Commissioner McGinn** said, "Well, the reason I ask is the applicant had an opportunity to review the report and contact them later and I don't know if there's a signed agreement or not."

**Commissioner Winters** said, "I think it's my understanding that the applicant just asks them to come out and take a look at what was going on and make sure that they were using best practices and she came out as a visit to see what kind of operation Mr. Jett was in. It was at Mr. Jett's request, I believe, to just make sure that he was doing things that were environmentally correct."

**Commissioner McGinn** said, "Okay. All right, thank you. I guess, the other . . ."

**Chairman Sciortino** said, "Did that answer your question on how it would be handled?"

**Commissioner McGinn** said, "I guess I'll have to learn a little more about that."

Another question I have for Dale, on the background report where they talk about the Equus Beds Management District, water source for City of Wichita. Well, it's also a water source for a lot of other people, has concerns about the hazardous material. In looking at his business and then looking at what farmers do and what they have to do to their tractors for regular maintenance and that type of thing. I'm just wondering, is the next step going to be agriculture? I mean, where are we going with this, especially when I look at how we're containing. You know the agricultural community right now, you know they're not dumping their oil in the back yard. They're putting it in barrels. I assume this gentleman's doing that, especially when I look at this report and when I hear about Safety Kleen being a part of this business. So my question is, Dale, every time there's something over the equus beds are we going to have this comment in there?"

**Mr. Miller** said, "Well, as a matter of practice we do send these types of applications to the Equus Beds Groundwater Management District and ask them to comment. Their comments have pretty much become fairly standardized, except in some interesting cases like we had last time. And so we always send those and provide them to you and you can take them for whatever they're worth. With respect to the ag question, you know agricultural activities are specifically exempt from zoning regulations, so we wouldn't be looking, under the zoning code, to be regulating agricultural activities. So that's the distinction between ag use and something similar with what we're discussing today."

**Commissioner McGinn** said, "Okay, thank you. I see this activity as very similar to what goes on in an agricultural community and as long as proper procedures are being followed and you're being a good steward of the land and taking care of hazardous materials or fluids or trans-fluids, whatever, cleaning fluids and properly disposing of them, I don't see this as a deleterious factor of this home use."

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**Chairman Sciortino** said, "After the meeting I need the definition of deleterious because I'm learning my vocabulary. Any other comments? I have one general comment and I listened very intently to what everyone has said here. I have some concern over the screening and I have concern over will the applicant do what he says he'll do, as far as no outside storage is concerned but I grew up in an era that you took a man at his word, until he was proven to be a liar, and then you didn't any longer take him at his word. And this is a case where I'm willing to take the man at his word until it's proven that he isn't deserving of that.

I drove the area. I looked at the area. I do say, actually, that the photos that I saw here are not really accurate as to . . . I was fairly impressed with the way the property was kept up, the trees. I suspect, if you're like me, it was my wife that was doing more of that, but at any rate it was landscaped and it was a nice home, it was nice. And if you're giving us your word that you're not going to have outside storage, I'm inclined to want to believe you until it's proven differently. So, we'll see where it goes with this, but . . ."

**Commissioner McGinn** said, "Mr. Chairman, one more question. And this has been said earlier, but I want to make sure. Glen, if there is a violation, if the neighbors start seeing cars out there and he's cited, it's over. Is that correct?"

**Mr. Wiltse** said, "Yes."

**Chairman Sciortino** said, "Except, you understand the procedural steps it takes to get it over, it's not just 'it's over'."

**Commissioner McGinn** said, "But I mean, he doesn't have to violate it three times before the neighbors get anything done."

**Chairman Sciortino** said, "All right. Okay, well if there's no further comment, there has been a Motion and a Second. Let's see where it goes. Clerk, call the roll."

### VOTE

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye

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Chairman Ben Sciortino

Aye

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

**G. DIVISION OF CULTURE, ENTERTAINMENT AND RECREATION.**

**1. AGREEMENT WITH CLEARWATER FALL FESTIVAL COMMITTEE PROVIDING CONTROLLED ACCESS TO ROSS AVENUE SEPTEMBER 6 – 8, 2002 TO HOLD FESTIVAL EVENTS.**

**Mr. Ron Holt**, Director, Division of Culture, Entertainment and Recreation, greeted the Commissioners and said, "This is the annual Clearwater Fall Festival and they're asking to be allowed to control access to Ross Avenue September 6<sup>th</sup> through the 8<sup>th</sup> to hold their festival. They have and will work with the Sedgwick County Sheriff's Reserve to make sure that traffic control is properly taken care of. Be happy to answer any questions, if there are any."

**MOTION**

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

Commissioner McGinn seconded the Motion.

**Chairman Sciortino** said, "I have one question. Will they have a golf tournament because I went out there last weekend and played golf out at the Clearwater greens and I like that course. They don't water it and even I could get 200-yard drives with all the rolls. Do you know if there's going to be a golf tournament associated with this festival?"

**Mr. Holt** said, "I'm not for sure. I don't think so, but I'm not for sure."

**Chairman Sciortino** said, "That's not contingent upon my approval but okay, thank you. I have a Motion and a Second. Clerk, call the roll."

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**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, “Thank you. Next item. Hi, John.”

**Chairman Sciortino left at 11:23**

**2. KANSAS COLISEUM MONTHLY REPORT.**

**POWERPOINT PRESENTATION**

**Mr. John Nath**, Director, Kansas Coliseum, greeted the Commissioners and said, “The report for July of 2002. Nearly 39,000 people visited the Coliseum for nine events, 15 individual performances. Net revenues were in excess of \$171,000.

Started out the month with just a little bitty concert by a group called the Eagles, quite the stir in the community. A great show, it was sold out. We were fortunate to be on the tour this year. We were very happy with it, as well as the Eagles concert. The people that came to the show spent an average of \$8 a head at the concession stands. Those people that went to the Coors Light V.I.P. room spent an additional \$21 a head. So people will respond when we do provide those kinds of premium offerings and they really had a great time.

Lifeway, which is Living Proof Live, a Christian women’s conference, a two-day conference, we had almost 8,500 people attend that. We had another concert by one of the new music groups called Tool. Now this group was real different. They did not allow any photographers at all in the building. Now usually it’s okay for the house photographer to get the photo pass to take the first couple of songs when the band plays, but absolutely no photographers were permitted in this one.

We had two horse shows, the Stars and Stripes Benefit Horse Show and the Pride of the Prairie Pinto Horse Show, nearly 4,000 people in attendance on that.

And the Stealth finished their second season, two games, 6,574 folks in attendance. The Stealth did make the playoffs this year and they loss to the eventual league champion by one point. So they were very competitive.

Coming up we have several horse shows coming up in September. We’re looking at Aerosmith

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possibly going on sale September 7<sup>th</sup> for a December 6<sup>th</sup> concert. That's not etched in stone but just to give you a little flavor of what's coming up. And of course, we have a sold out Cher concert on September 30<sup>th</sup>. If there's any questions, I'd be happy to answer them at this time."

**Chair Pro Tem Gwin** said, "Commissioner McGinn has one, John."

**Commissioner McGinn** said, "I heard a rumor James Taylor was coming. Is that true or not?"

**Mr. Nath** said, "Possibly, possibly not. We're working with that and that could happen, although I can't guarantee that."

**Chair Pro Tem Gwin** said, "Anything else? What's the will of the Board on John's item?"

**MOTION**

Commissioner Norton moved to receive and file.

Commissioner Winters seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Absent

**Chair Pro Tem Gwin** said, "Thank you, John. Thanks for being here and that Eagle's concert was just incredible. You're right. Next item please."

**Chairman Sciortino returned at 11:24 a.m.**

**Commissioner McGinn left at 11:24 a.m.**

**H. DIVISION OF FINANCE.**

- 1. AGREEMENT WITH JUSTICE BENEFITS, INC. TO PROVIDE ASSISTANCE IN SECURING FEDERAL REIMBURSEMENTS FOR ELIGIBLE PROGRAMS OPERATED BY SEDGWICK COUNTY.**

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**Mr. Marty Hughes**, Revenue Manager, greeted the Commissioners and said, “Sedgwick County has contracted with Justice Benefits Incorporated since April of 2000 to assist the County in securing federal reimbursements when we’re eligible for them.

The primary focus of assistance over the past three years has been with the state’s Criminal Alien Assistance program through the Department of Justice. Justice Benefits Incorporated has been very helpful in taking Sedgwick County inmate and detention data files and analyzing them to include only eligible inmates and converting them to an acceptable format for the state Criminal Alien Assistance program grant application process.

The agreement maintains the same compensation of 22% of federal reimbursements in excess of base line, which is \$179,299. County Sheriff and Finance staff have been very pleased with this arrangement and recommends the continuation of this agreement for another year with options to renew for three additional years and we’d recommend your approval of the agreement.”

**Chairman Sciortino** said, “Thank you. Any questions of this presenter?”

**MOTION**

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

Commissioner Norton seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Absent
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, “Thank you. Next item. Thanks.”

**Commissioner McGinn returned at 11:26 a.m.**

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**2. ADDITION TO THE 2002 CAPITAL IMPROVEMENT PROGRAM (CIP) OF CIP# R-294, RECONSTRUCTION OF 45<sup>TH</sup> STREET NORTH FROM HYDRAULIC TO THE UNITED WAREHOUSE ENTRANCE.**

**POWERPOINT PRESENTATION**

**Mr. Pete Giroux**, Senior Management Analyst, Budget Department, greeted the Commissioners and said, “This morning, Public Works has requested a total of three amendments to the CIP to support upgrade of the road and bridge infrastructure near United Warehouse on 45<sup>th</sup> Street.

That was precipitated by the failure of the deck on a bridge just west of Hydraulic. Here’s the location of the bridge and United Warehouse. Under ideal conditions, we want all our bridges to be able to take maximum legal load. The bridge was originally constructed in ’63. Public Works is recommending constructing a new bridge, rather than replacing the bridge deck.

Here’s how we’re going to pay for it. The Andale Watershed District has requested delaying a bridge in western Sedgwick County on 247<sup>th</sup> Street to allow further drainage studies and it will be resubmitted in the next CIP. The design is compatible with the bridge needed on 45<sup>th</sup> Street. Here’s the bridge we proposed to delete, with your approval.

At the same time, the road infrastructure on 45<sup>th</sup> Street is a cold mix overlay and Public Works proposes to upgrade the infrastructure to two-lane rural industrial. The current road is a cold mix overlay and that is not going to hold up to continued traffic.

So here’s what we’d propose. Here’s the net impact on the CIP. We’d need an additional about \$9,000 to do the bridge and the road will cost approximately \$400,000.

CIP Committee has reviewed and recommends approval. Do you have any questions?”

**MOTION**

Commissioner McGinn moved to approve the CIP amendment.

Commissioner Gwin seconded the Motion.

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

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**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Commissioner Gwin** said, “Now did that take care of two and three, Pete or is that just item two?”

**Chairman Sciortino** said, “Isn’t item three the same thing?”

**Mr. Giroux** said, “Three is the addition of the R-294, the road. So we need Motions on all three.”

**Commissioner McGinn** said, “Do you have another presentation?”

**Mr. Giroux** said, “No.”

**3. ADDITION TO THE 2002 CIP OF CIP# B-430, REPLACEMENT OF BRIDGE ON 45<sup>TH</sup> STREET NORTH.**

**MOTION**

Commissioner McGinn moved to approve the CIP amendment.

Commissioner Gwin seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

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**Chairman Sciortino** said, "Thank you. And now we need a Motion to delete from the CIP, item four."

4. **DELETION FROM THE 2002 CIP OF CIP# B-423, BRIDGE ON 247<sup>TH</sup> STREET WEST BETWEEN 69<sup>TH</sup> STREET NORTH AND 77<sup>TH</sup> STREET NORTH.**

**MOTION**

Commissioner Norton moved to approve the deletion from the CIP.

Commissioner McGinn seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Thank you. Next item please."

- I. **GRANT APPLICATION TO KANSAS DEPARTMENT OF TRANSPORTATION FOR CONTINUED FUNDING OF THE SEDGWICK COUNTY TRANSPORTATION BROKERAGE PROGRAM.**

**Ms. Annette Graham**, Director, Department on Aging, greeted the Commissioners and said, "The Sedgwick County Transportation Brokerage is applying for a continued operating assistance funding from the Kansas Department of Transportation for its Rural Public Transportation program. The brokerage is applying for a two-year grant for the period of July 1<sup>st</sup>, 2003 to June 30<sup>th</sup>, 2005.

Under this grant, the request for the first year of the grant is for \$100,772 from the Federal Transit Administration, \$40,309 from the Kansas Department of Transportation and the County match is

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\$60,463. For year two the grant award would be \$114,353 from the Federal Transit Association Administration, \$45,741 from the Kansas Department of Transportation and the County match would be \$68,612.

Under this program, that grant from the local match, I mean the local match amount is money that we are currently putting into the program under our transportation program, so we are able to use current dollar amounts as match. So, I would request that you approve the grant application and would be happy to answer any questions.”

**Chairman Sciortino** said, “Thank you. Any questions of Annette on this item? I don’t see that there are any. So what’s the will of the Board?”

**MOTION**

Commissioner Norton moved to approve the Grant Application and authorize the Chairman to sign all necessary documents, including the grant award agreement containing substantially the same terms and conditions as this Application.

Commissioner McGinn seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, “Next item.”

**J. HEALTH DEPARTMENT.**

**1. AGREEMENT WITH UNIVERSITY OF KANSAS SCHOOL OF MEDICINE-WICHITA MEDICAL PRACTICE ASSOCIATION**

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**PROVIDING CLINICAL ROTATION FOR MEDICAL RESIDENTS THROUGH THE CHILDREN'S PRIMARY CARE CLINIC.**

**Ms. Phyllis Gearing-Anderson**, Director of Preventive Health, Health Department, greeted the Commissioners and said, "I'm requesting your approval of a contract between the Kansas University School of Medicine, Wichita and the Sedgwick County Health Department. This contract, or the K.U. School of Medicine collaborates with the Children's Primary Care Clinic in providing health care to children from birth to age 18 through a walk-in evening clinic at the Sedgwick County Health Department.

This collaboration began over 10 years ago, with the establishment of the Children's Primary Care Clinic. So we have a very long relationship with K.U. School of Medicine with this clinic. It provides a rotation site for K.U. School of Medicine residents and also an evening clinic for families who may otherwise seek services at the local emergency room. So therefore there's some savings in providing this clinic. The cost of this service is \$2,000 monthly and it's funded through KDHE grant that we have. We're requesting your approval of this contract and authorization of the Chairman to sign."

**Chairman Sciortino** said, "Thank you. Any questions of the applicant? I have just one quick one here. Is this clinic free to the people that qualify or do they pay a fee if they're bringing their children in?"

**Ms. Gearing-Anderson** said, "Services are provided on a sliding fee schedule and the fees sometimes do slide down to zero."

**Chairman Sciortino** said, "Okay. And where's a number, if someone wants to maybe call to inquire whether or not they would qualify to come in? Can anyone come in? The only qualifier is the slide . . ."

**Ms. Gearing-Anderson** said, "No, no. Anyone can come. We accept Medicaid, also Healthwave insurance and self-pay clients."

**Chairman Sciortino** said, "Okay. And what is the number if they want to call and inquire for information?"

**Ms. Gearing-Anderson** said, "The number is, to the main Health Department is 660-7300."

**Chairman Sciortino** said, "Okay, great. Thank you. I don't have any further . . ."

**MOTION**

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Commissioner McGinn 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 Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Thank you. Next item please."

**2. DELETION OF TWO PART-TIME COMMUNITY HEALTH NURSE I POSITIONS FROM, AND ADDITION OF ONE FULL-TIME COMMUNITY HEALTH NURSE I POSITION TO, THE HEALTH DEPARTMENT STAFFING TABLE.**

**Mr. William Buchanan**, County Manager, greeted the Commissioners and said, "I'd recommend that we postpone this agenda item."

**Chairman Sciortino** said, "That would be now J-2? You're recommending . . . You're withdrawing? Defer indefinitely?"

**Mr. Buchanan** said, "Defer indefinitely."

**MOTION**

Commissioner Gwin moved to defer Item J-2 indefinitely.

Commissioner Norton seconded the Motion.

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

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**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Thank you very much. Next item."

**K. DELETION OF 12 VEHICLES FROM THE HEALTH DEPARTMENT FLEET.**

**Mr. Marvin Duncan**, Director, Fleet Management Department, greeted the Commissioners and said, "We're here today to seek your approval to delete these 12 vehicles. The Health Department has determined that it's not cost-effective to keep these low use vehicles. The Department has weighed all the factors in this decision and they have determined that no program will be adversely affected. Employees that use their personal vehicles will be reimbursed mileage from their respective grants. If this reduction is approved, there will still be seven vehicles in that department that can be used for high-mileage users, occasional trips out of town and for employees that may have car problems that day. Low-mileage users are willing to be paid this mileage, in lieu of being assigned a County vehicle and they understand the consequences.

I have Health Department officials here. We're ready to entertain any questions you might have concerning this issue."

**Chairman Sciortino** said, "Just for clarification, if I understood the backup and I'm very, very complimentary of Mr. Frantz and whatever. We're looking at over \$25,000 savings still this year and close to \$70,000 savings next year."

**Mr. Duncan** said, "Yes, sir."

**Chairman Sciortino** said, "Okay."

**Mr. Duncan** said, "And in future years, you would have the costs of replacing these vehicles, which in today's dollars is about \$208,000 that we won't have to replace in the future."

**Chairman Sciortino** said, "Well, Jerry, I assume you had something to do with this and I just want to compliment you. This is the type of actually not just talking the talk but walking the walk when we assigned all the department heads to really look for a way or Bill did, assigned them to start

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cutting expenses, anticipating downturn in the economy and this is one very graphic way that we've done that and I compliment you for that."

**Mr. Gerald Frantz**, Interim Health Department Director, greeted the Commissioners and said, "Thank you for the compliment and I will take complete credit for it. However, it isn't me. It is Marvin and his son Chris, who is in our department. So, I agree. It's a great thing but I can't take credit for it. Thank you."

**Chairman Sciortino** said, "Mr. Duncan, I remove my compliment of Mr. Frantz and I bestow it on you. Thank you very, very . . . and your son Chris. And thank you very much for that. I really do mean it."

**MOTION**

Commissioner Gwin moved to approve the deletions from the Health Department fleet.

Commissioner McGinn seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Thank you again, Marvin. Next item please."

**L. MODIFICATION OF PLANS AND CONSTRUCTION, REQUEST NUMBER ONE, WITH KLAVER CONSTRUCTION CO., INC.**

**SEDGWICK COUNTY PROJECT NUMBERS:**

- **604-14-648 BRIDGE ON 61<sup>ST</sup> STREET NORTH BETWEEN 183<sup>RD</sup> AND 199<sup>TH</sup> STREETS WEST. CIP# B-342. DISTRICT #3.**
- **775-Q-4325 BRIDGE ON 359<sup>TH</sup> STREET WEST BETWEEN 6<sup>TH</sup> AND 15<sup>TH</sup> STREETS SOUTH. CIP# B-361. DISTRICT #3.**

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- **781-P-5100 311<sup>TH</sup> STREET WEST BETWEEN 4<sup>TH</sup> AND 6<sup>TH</sup> STREETS NORTH. CIP# B-366. DISTRICT #3.**
- **608-27-5005 BRIDGE ON 45<sup>TH</sup> STREET NORTH BETWEEN BROADWAY AND HYDRAULIC. CIP# B-430. DISTRICT #4.**

**Mr. David Spears**, Director/County Engineer, Public Works, greeted the Commissioners and said, “Item L is a modification of plans and construction which deletes a bridge on Andale Road and adds a bridge on 45<sup>th</sup> Street North between Broadway and Hydraulic near United Warehouse. There will be an increase of \$37,780.50 to account for the skew in the proposed bridge due to the angle of the stream with the road, more extensive removal of the existing structure, and additional dirt work.

We have received approval from the Corps of Engineers out of the Tulsa District. We have also received approval from the City of Wichita. I received e-mail at the beginning of the meeting this morning that DWR is looking favorably on our hydraulic calculations and we are optimistic about receiving a permit from them. We have also received a letter from the Andale Watershed District asking us to defer construction of the bridge on Andale Road. And with all of that, I’d recommend that you approve the modification and authorize the Chairman to sign.”

**MOTION**

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

Commissioner McGinn seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, “Next item please. Thank you, David.”

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**M. REPORT OF THE BOARD OF BIDS AND CONTRACTS' REGULAR MEETING OF AUGUST 22, 2002.**

**Ms. Iris Baker**, Director, Purchasing Department, greeted the Commissioners and said, "There are three items today for consideration that resulted from the meeting of the Board of Bids and Contracts of August 22, 2002.

**1) PRESCRIPTION DRUG BENEFITS- RISK MANAGEMENT  
FUNDING: RISK MANAGEMENT**

Item one, prescription drug benefits for Risk Management. Recommend the low proposal from Walgreens Health Initiatives to execute a contract for projected costs of \$3,105,950.

**2) ANNUAL SOFTWARE LICENSE RENEWAL- DIVISION OF INFORMATION & OPERATIONS  
FUNDING: SYSTEMS & SECURITY**

Item two, an annual software license renewal for the Division of Information and Operations. Recommend the quote from Computer Associates in the amount of \$25,615.

**3) STAFFING SERVICES- KANSAS COLISEUM  
FUNDING: KANSAS COLISEUM**

And item three, staffing services for the Kansas Coliseum. Recommend the proposal to execute a contract with Elite Professional Services for items 1 through 6, 8, 9 and 10 and to accept the proposal and execute a contract with Stagecraft for item 7.

Be happy to answer any questions and recommend approval of these items today."

**Chairman Sciortino** said, "Irene, on item 1 . . . Iris, I'm sorry."

**Commissioner Norton** said, "That's three meetings in a row. You're consistent, Ben. I would change your name, Iris."

**Ms. Baker** said, "I'll think about it."

**Chairman Sciortino** said, "I think you took to heart the compliment I gave you last time. On item one, we're estimating close to an \$800,000 savings. Is that how I read this?"

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**Ms. Baker** said, “Yes.”

**Chairman Sciortino** said, “I was told, somebody wanted to speak to this item. All right, we’ll go ahead. Why don’t we do this? Why don’t we take items 1 and 2 first? I would entertain a Motion on items 1 and 2 and we’ll let this gentleman speak to us on item 3.”

**MOTION**

Commissioner McGinn moved to approve the recommendations of the Board of Bids and Contracts on items 1 and 2.

Commissioner Norton seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, “Thank you. While this is not a requirement of us, as we understand there is an individual that would like to speak to us about item 3. So, sir if you would come to the podium. Give us your name and address and we would like to limit your comments to no more than five minutes, if you would please.”

**Mr. Robert Nices**, 1244 Sunset, Wichita, Ks., greeted the Commissioners and said, “I appreciate the time. State representative candidate and lead assistant for Executive Security, which is my father’s business. What I come here today for is to ask a reconsideration. There was some inconsistencies on the Bid Board in what they put out for bid and the way they considered it. And also I believe and I have evidence to show that our bid was not really given a very thorough review. The evidence I use that is the report from the bid board stating . . . We have a breakdown, I don’t know if you guys received it, of everybody’s position and their quotes. Number one, on peer security they gave us a dual rate and actually the peer security rate was \$9.25. What they did, without sending us an amendment or anything else is they eliminated the . . . let me get the exact title of what they called it, the building overnight security and the parking lot security, they seemed to total eliminate that from the bid requirements or recommendations.

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Also in the areas of supervision, they said that we did not list, which would make it an incomplete bid but I have, and I can show you that if they would have went through the complete bid, the final entry in it says, 'event supervisors and on-site manager gives a rate and gives the job description of what it would cover. And what we did in this, when we created this bid, I helped my father with it, is we created one supervisor's rate for everybody. But like I said in this they say it's not listed, which it has, which leads me to believe that some people prefer the status quo and that our bid was not really thoroughly went over.

And that when you go price by price breakdown and if you do it the way it was bid, with the outdoor security and the overnight security being separate from what they call peer security, which would be the people working the floor and working the pits. I mean, that's two different balls of wax. I mean, somebody to stand in front of a concert and somebody to sit there 24 hours a day, obviously on a rotating shift, is two separate incidents and two separate requirements and a lot different responsibilities.

Other things why I feel, and I don't know, like I said, if it's a time or a place, primarily what I'm requesting is that possibly a public hearing. I can bring people to refute things that were brought up at the bid board as in the fact that the director said that the position is not on the job training. Between myself, the other assistant supervisor and the owner, security in military, we have over 55 years of supervisory and military, you know, different security aspects.

Myself, I'm a retired body guard. Our assistant is also retired body guard. Our company, we have excellent references, not only from Wichita State University, where I've seen several of you at basketball and baseball events, but also from Kansas State University, where we annually at basketball events handle crowds of over 50,000 people. So the fact that we have no experience or we're not used to large crowds is not true. We've worked with Wichita Festivals. We were the concert security for Huey Lewis and the News when they held it at Wichita State. We regularly do the NCAA regional tournaments and you know everything involved with the university. And like I said, we do garden shows.

What I'm basically requesting is the possibility to have a hearing where I can bring in people from the university, some people that can bring in some things that I find scary the fact that this is Sedgwick County and we're trying to contract with somebody who has never even lived in Sedgwick County, much less the State of Kansas.

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The company, Elite Security, went from Oklahoma City to Las Vegas. The supervisor, now this may have changed, but as of less than six months ago, the supervisor from the Coliseum came up from Oklahoma City. I mean, they don't even have local supervisors.

The fact that it's not on the job training and how do you train staff, the fact is and I will bring this to prove, people that work the pits and people that take the tickets, there's a gentleman that's been taking tickets out there from probably since the Coliseum started. I know, as a matter of fact, I don't know if he's still there, but he was last year.

It's not . . . When you change companies, you're not changes much of the personnel. What you're changing is the management, the supervision and sometimes there are a few positions that obviously will change with the changing of the company. I was out there when CSI switched to Elite and I stayed on until I had a difference in business practice with them because I like to get paid and he didn't like to pay me but that's immaterial."

**Chairman Sciortino** said, "Let me ask you something. Normally we limit it to five. How much more additional time would you need sir?"

**Mr. Nices** said, "Well, I'd like to bring in . . . Obviously, not today but right now I mean, I'm requesting a hearing. I'm saying the reason is we're local, we have experience, the people are going to stay the same. It's going to be management and the other thing which was brought up and I was told was hearsay and I would like to prove it is. None of my supervisors, at any of their sites, have ever been arrested while on duty. While people may or may not know, two supervisors for Elite, the people out there now, were removed during the duty. One . . . I was out there, so I know, so it's not hearsay, was running an actual call service out of the Coliseum. There's a tape of that. We'll be able to access that from Sedgwick County and also, in 1998, during the Garth Brooks concerts, the supervisor there was arrested for not only stealing Garth Brooks tickets but breaking into the Coliseum office, stealing credit cards and then there were other allegations which I don't know what happened."

**Chairman Sciortino** said, "Let me just . . . Just in one sentence, what are you requesting of us?"

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**Mr. Nices** said, "I would like to have either an open hearing, where I can present everything, either be it before you guys or the bid board. Somebody and actually have my bid looked at, I mean fully. Because like I said, it's obvious from the proof of the bid and the proposal they did and judge it on what the prices were and what the bid was, not what's changed too."

**Chairman Sciortino** said, "Got it. Any questions? Commissioner Norton."

**Commissioner Norton** said, "Yes, I just have some concerns that we didn't take the low bid and I'd like Iris to kind of address that. I mean, WD Enterprises almost straight down the ticket is considerably less. I can't speak to Executive Security. They have some things not listed. I have a concern that Elite picked up stagehands at 12.58 to 31.66, which also is, at least on the low end, is cheaper than Stagecraft and why we rotated over to Stagecraft. So maybe you can answer a couple of those, Iris."

**Ms. Baker** said, "Yes, WD Enterprises, the lowest cost proposal didn't offer a complete proposal. The references, they only had one reference and they referenced five pieces of activity with them and the references weren't applicable to what we had requested in the RFP. It really had no bearing with this RFP. There was nothing there to measure."

In terms of the pricing received from Stagecraft, those services are local union, so those amounts are fixed and there was one particular price, the \$12.58 that Elite had listed in their range was for a particular position that is hardly ever used but that position is listed in Stagecraft's union literature with a price. And that's where the 12.58. The rest of it all averages 16.33 to 31.66, based on about 10 or 12 different positions."

**Commissioner Norton** said, "Did everybody, all of these bids include that Stagecraft would be the flow through subcontractor? Did they all assume that?"

**Ms. Baker** said, "Yes."

**Commissioner Norton** said, "Okay. Why then did we include stagehands on this proposal, if we thought we were going to go with the union Stagecraft anyway, why did we feel like they had to bid?"

**Ms. Baker** said, "Stagecraft themselves submitted a proposal and they added several terms and conditions in their proposal that weren't in the bid, so we went back to them and had a discussion and removed those. So we felt it better if we just contract directly with those."

**Commissioner Norton** said, "I thought originally, when we were going to put this out for bid, that we were thinking that we wanted to put everything under one blanket, including the flow through

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subcontract and it ends up we don't do that. Am I wrong in thinking that that's what our initial thought was? That everything would fall under one turnkey operation and management person?"

**Ms. Baker** said, "No, I don't think you're wrong. I think that was the initial intent."

**Commissioner Norton** said, "That's all I have right now."

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

**Commissioner Winters** said, "Is there a reason that this has to be acted on today?"

**Mr. Buchanan** said, "No, sir."

**Commissioner Winters** said, "Well, I wonder if a review might be in order. I appreciate Mr. Nices coming but I guess I would make the comment that I'm going to rely pretty heavy on the staff at the Coliseum, and particularly the senior staff. Security is a very important issue and I'm . . . You know, you get down to knowing who you're comfortable working with and whose going to perform the way you want and I'm certainly not capable of knowing whether Executive Security can or can't but I'm going to be thinking a lot more than just about low bid when it comes to security. I mean, the recommendations of the staff at the Coliseum is going to play a heavy roll. I'm almost ready to take action today but this gentleman has brought up enough that I think, if somebody could review this to make sure we're on course, that would be fine with me."

**Chairman Sciortino** said, "Well, I think these allegations are serious enough that it does demand review and I would like to at least propose that you all consider a Motion to maybe we could refer this to the Manager for further review and then to get back to us in a timely manner. How much, if this does get approved, how much time would you need, Mr. Manager?"

**Mr. Buchanan** said, "I would anticipate having this back on the agenda for next week. I don't know why it would take longer than that."

**Chairman Sciortino** said, "Okay. Well speaking for myself, I just think when allegations of any natures, and these do appear to be serious, I think they're sincere, sincerely made and I would be more comfortable looking at a review of this item. But before we do that, Commissioner Norton."

**Commissioner Norton** said, "Just one last thing. As I go through this next week, there's a good chance I might abstain. I do know the gentleman that owns and operates Smart Security Investigations. He used to work for me at Target. We have a great relationship. I think he's working hard to build his business and I want to be sure that's on the record when I get ready to

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make a decision. I don't know that I'll abstain. The gentleman has asked some pertinent questions to me about the process. He's not particularly upset that there was a chance that he would not be the low bidder but that he wants to understand the processes. He is starting his new business. I feel it's the right thing to do to postpone and re-look at all the bids and understand that we made the right decision but I did want that on the record that I do have a connection there. Not monetarily but part of the business but I do know the person that runs the business."

**MOTION**

Commissioner Gwin moved to refer item 3 of the Board of Bids and Contracts back to the Manager for his review and ask that he bring it back for consideration next week.

Commissioner McGinn seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Next item please."

**CONSENT AGENDA**

**N. CONSENT AGENDA.**

- 1. Lease Amendment with Ecco Development Corporation providing a five-year extension to the lease for Housing Department space at 604 North Main, Suite E.**

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**2. Donations to be used for COMCARE's suicide prevention program:**

Bill & Cheryl Jones	\$25
Bridgette C. Hensley	\$20
Bruce and Holly Tevell	\$25
Carol and Brett Conrad	\$25
Jan and David McDavitt	\$15
Mary Jane and Lawrence Kraus	\$10
Richard and Lois Foote	\$25
Robert J. Navarat	\$25

**3. Plat.**

Approved by Public Works. The County Treasurer has certified that taxes for the year 2001 and prior years have been paid for the following plat:

Suncrest 2<sup>nd</sup> Addition

**4. Order dated August 21, 2002 to correct tax roll for change of assessment.**

**5. Payroll Check Registers of August 2, August 15 and August 16, 2002.**

**6. General Bills Check Register(s) for the week of August 21 – 27, 2002.**

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

**MOTION**

Commissioner Winters moved to approve the Consent Agenda as presented.

Commissioner Gwin seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye

**Regular Meeting, August 28, 2002**

Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chairman Sciortino** said, "Before we move on, we have some time constraints."

**Mr. Buchanan** said, "Mr. Chairman, may I make a recommendation that you recess the meeting now until about 1:15 or 1:30, when we could reconvene to go into Executive Session. There is a matter that we need to deal with."

**Chairman Sciortino** said, "Okay. What we'll do right now is we're going to recess this meeting for lunch and we'll be back no sooner than 1:30."

**The Board of Sedgwick County Commissioners recessed at 12:03 p.m. and returned at 1:46 p.m.**

**Chairman Sciortino** said, "Is there any other business to come before this Board?"

**O. OTHER**

**MOTION**

Commissioner Gwin moved that the Board of County Commissioners recess into Executive Session for 10 minutes to consider consultation with legal counsel on matters privileged in the attorney client relationship relating to legal advice and personnel matters of non-elected personnel and that the Board of County Commissioners return from Executive Session no sooner than 1:55 p.m.

Commissioner Norton seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Regular Meeting, August 28, 2002**

**Chairman Sciortino** said, “We’re now recessed into Executive Session.”

**The Board of Sedgwick County Commissioners recessed into Executive Session at 1:46 p.m. and returned at 2:24 p.m.**

**Chairman Sciortino left at 1:47 p.m.**

**Chair Pro Tem Gwin** said, “We’re back from Executive Session. Let the record show that there was no binding action taken while we were in Executive Session. Mr. Euson, anything?”

**Mr. Euson** said, “Yes, Commissioners. While we were in Executive Session we discussed a matter involving Board of County Commissioners versus Conspec and we discussed the possibility of settling that case. I’d recommend a settlement in the amount of \$10,611.92.”

**Commissioner Winters** said, “For clarification, that’s the amount they’re going to pay us?”

**Mr. Euson** said, “That’s the amount they’re going to pay us.”

**Chair Pro Tem Gwin** said, “You’ve heard Mr. Euson’s recommendation. Is there a Motion?”

**MOTION**

Commissioner Norton moved to approve the settlement with Conspec for \$10,611.92.

Commissioner Winters seconded the Motion.

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

**VOTE**

Commissioner Betsy Gwin	Aye
Commissioner Tim Norton	Aye
Commissioner Thomas Winters	Aye
Commissioner Carolyn McGinn	Aye
Chairman Ben Sciortino	Aye

**Chair Pro Tem Gwin** said, “Any other business? Then we’re adjourned.”

**Regular Meeting, August 28, 2002**

**P. ADJOURNMENT**

There being no other business to come before the Board, the Meeting was adjourned at 2:24 p.m.

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

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**BEN SCIORTINO**, Chairman  
Fifth District

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**BETSY GWIN**, Chair Pro Tem  
First District

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**TIM R. NORTON**, Commissioner  
Second District

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

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**Regular Meeting, August 28, 2002**

**CAROLYN MC GINN**, Commissioner  
Fourth District

ATTEST:

\_\_\_\_\_  
**Don Brace**, County Clerk

APPROVED:

\_\_\_\_\_, 2002