

**CITY OF DERBY
PLANNING COMMISSION MINUTES
May 19, 2011 6:30 PM**



MEMBERS PRESENT: Sue Wright, Kelly Farber, Doug Chambers, Eric Tauer, Keith Volz, Pat Baer, Jack Hezlep, Tasha Brackeen, Gunter Hansen

MEMBERS ABSENT: Shawn Riley

CITY STAFF PRESENT: Bud Newberry, City Planner; Stephanie Cox, Recording Secretary

CONSIDERATION OF MINUTES:

Minutes of May 5, 2011 Planning Commission Meeting.

MOTION: Pat Baer moved to approve the minutes as written.

SECOND: Jack Hezlep

VOTE: 8-0-1, Brackeen abstained

PUBLIC FORUM

Commissioner Volz commented that the parking at Los Cocos was overflowing the parking lot and questioned if the parking requirements for restaurants should be looked at again.

AGENDA ITEM NO: 1

STAFF REPORT

Mulvane 5-12-11

Derby 5-19-11

MAPC 5-26-11

CASE NUMBER: DER2010-14

APPLICANT/AGENT: Cities of Derby and Mulvane

REQUEST: Amendment to the Wichita-Sedgwick County Unified Zoning Code to establish the LL-O Large Lot Overlay ("LL-O") district and to apply the LL-O district to certain properties in unincorporated Sedgwick County that are twenty acres or larger located; generally located between Derby and

BACKGROUND: In June of 2010, Sedgwick County, the City of Derby and the City of Mulvane adopted the *Derby-Mulvane Joint Area Plan* ("Joint Area Plan"). The Joint Area Plan includes the goal of ensuring and enhancing the ability of Derby and Mulvane to provide the most effective and efficient services to areas identified for future expansion. One of the obstacles to the effective and efficient extension of urban services is the premature splitting of larger tracts into smaller tracts or lots 20 acres or less. The resulting smaller tracts are generally developed for residential uses and are difficult to retrofit for municipal services; may restrict the ability of municipalities to extend urban services; can be more difficult to redevelop and could impair the ability of agricultural uses to operate nearby.

The Joint Area Plan indicated that one solution to this concern is to "create a new zone district (or overlay district) with a minimum lot size requirement of 20 acres" (Appendix C, page 8). The Joint Area Plan also indicated a geographic area in unincorporated Sedgwick County to which the proposed overlay district should be applied: certain properties 20 acres or larger generally located between Derby and Mulvane, east of the Arkansas River, west of 127th Street East, between 87th Street South and one-half mile south of 103rd Street South (see the attached map).

If the recommendations of this report are adopted, the Wichita-Sedgwick County Unified Zoning Code ("UZC") would be amended to establish Article III, Section. III-C, 13, the LL-O Large Lot Overlay ("LL-O") district (see attached resolution). As a second action, the Metropolitan Area Planning Commission (MAPC) is being asked to apply the LL-O Large Lot Overlay district to the properties identified in the attached map. The proposed LL-O District would establish a minimum lot size of 20 acres for the properties to which it is applied irrespective of a property's base zoning. All other land use restrictions and property development standards established by the property's base zoning would remain unchanged. For example, all of the properties for which the LL-O district is currently proposed are zoned RR Rural Residential ("RR") and are 20 acres or larger in size. The base RR district has a minimum lot size of two acres; however, if the LL-O district is applied to these properties, the minimum lot size will become 20 acres, not two acres. All other permitted uses, Conditional Uses, lot width, setback, height and special district regulations would remain unchanged. All of the property proposed to be subject to the protective overlay is located within the "zoning area of influence" boundaries of Derby and Mulvane as well as their subdivision jurisdiction.

As indicated above, the identified properties within the existing subject area are entirely zoned RR. Article III, Sec.III-B.2 of the UZC indicates that the RR zoning district is meant to accommodate very large lot Single-Family residential development in areas where a full range of municipal services are not available and are not likely to be available in the near future. The RR zoning district is generally compatible with the "Rural" category of the *Wichita and Small Cities 2030 Urban Growth Areas* ("2030 Guide"). It is meant for application in the unincorporated areas of Sedgwick County. The RR zoning district's minimum lot sizes are 2-acres for septic system and 4.5-acres for a lagoon, per the capability of the soil.

The SF-20 Single-Family Residential (“SF-20”) zoning district is intended to accommodate large lot Single-Family residential development and compatible land uses. It is generally compatible with all the 2030 urban growth areas, as identified on the “2030 Guide.” It is meant for application in the unincorporated areas of Sedgwick County, where some public services are available and where soils are capable of accommodating either septic tanks or a county approved alternative sewer system. An alternative sewer system requires a minimum lot size of one-acre and public water. Rural Water District #3 serves all of the subject area and is a public water source.

A property owner subject to the LL-O district but wishing to break his property into less than 20-acres may request removal from the LL-O by applying for an amendment or termination of the overly district to remove the LL-O from the property. Applications will be sent for review and recommendation to either the Derby or Mulvane planning commissions (Small Cities), based on the property’s location within either Small Cities’ Area of Zoning Influence. The recommendation of the Small Cities’ planning commissions will then be forwarded to the MAPC Public Hearing meeting. If a zone change from the LL-O’s base RR zoning is requested the recommendation process will include final action by the Sedgwick County Board of County Commissioners. It is advised that prior to making application the property owner meets with the Small Cities Planning Staff and the MAPD to discuss the request for removal. The recommendations of the Small Cities’ planning commissions and the MAPC will be forwarded to the BoCC for final action.

CASE HISTORY: In 1985, Sedgwick County adopted county wide zoning that established the RR zoning that exists today. Prior to 1985 most of the area’s zoning would have been established by Sedgwick County three mile ring zoning.

ADJACENT ZONING AND LAND USE:

NORTH: City of Derby zoning and mostly RR
SOUTH: City of Mulvane zoning and mostly RR
EAST: Mostly RR
WEST: Mostly RR

PUBLIC SERVICES: Staff is not aware of any city supplied sewer service to these properties. Rural Water District #3 serves all of the subject area and is a public water source. Other County supplied services such as sheriff, EMS and code enforcement are available.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide (“2030 Guide”)” categorizes this area as ‘Rural.’ The Rural category is outside of all the 2030 urban growth areas and is intended to accommodate agricultural uses, rural based uses no more offensive than those agricultural uses commonly found in the county and predominately large lot residences of 1 to 2-acres or more. Water and sewer services are provided per individual lot or for a subdivision as community water and sewer services.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the amendment to the Wichita-Sedgwick County Unified Zoning Code be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The proposed overlay district is to be applied to properties that are in agricultural or non-urbanized use, over 20 acres in size, and are located either where delivery of the full-range of urban services is not expected or where urban-scale development should occur in the near-term. The applicable properties are located where the delivery of a full range of urban services is either not expected in the near term or is anticipated with the urban development of the property. Most of the properties to which the overlay district is expected to be applied will be zoned RR, but it is possible it could be applied to other non-urbanized non-RR zoned tracts.
2. The suitability of the subject property for the uses to which it has been restricted: The proposed overlay will not change any of the uses or development standards of the properties' base zoning except the minimum lot size; therefore, the proposed amendment should not significantly impact use considerations.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Increasing the minimum lot size should not detrimentally impact nearby property.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the amendment should improve public health, safety and welfare by creating the means to efficiently and effectively provide public services at the appropriate time. Most, if not all, of these properties do not currently have city supplied sewer or water service.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Adoption of this amendment will support the comprehensive plan's overall goal of providing orderly, effective and efficient growth by avoiding demands for the premature extension of services.
6. Impact of the proposed development on community facilities: Approval of the amendment should promote the cost effective extension of public services.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the LL-O district be applied to the properties identified on the attached map.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This particular area's properties are zoned RR and are mostly used for agriculture with farmsteads or large tract single-family residences. The proposed overlay district is to be applied to agricultural or non-urbanized large tract properties over 20 acres in size that are currently without city supplied sewer or water services or served with minimal publicly supplied services, and for which the delivery of a full range of urban services is not expected in the near term. All the properties to which the overlay district is to be applied are zoned RR and are over 20 acres in size.
2. The suitability of the subject property for the uses to which it has been restricted: The proposed overlay will not change any of the uses or development standards of the properties' base RR zoning's permitted uses, Conditional Uses or development standards, except increase the minimum lot size; therefore, the proposed amendment should not significantly impact use considerations.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Increasing the minimum lot size should not detrimentally impact nearby property, most of which are in agricultural use and are without city water and sewer.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the amendment should improve public health, safety and welfare by creating the means to efficiently and effectively provide public services at the appropriate time. Most, if not all, of these properties do not currently have city supplied sewer or water service but are located within Rural Water District #3.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Adoption of this amendment will support the comprehensive plan's overall goal of providing orderly, effective and efficient growth by avoiding demands for the premature extension of services.
6. Impact of the proposed development on community facilities: Approval of the amendment should promote the cost effective extension of public services.

DISCUSSION:

Jack Hezlep asked for clarification on jurisdiction.

Dale Miller, Plans Manager for MAPD replied the LLO district would apply whether it's in the Derby or Mulvane area of influence.

Gunter Hansen asked for identification of school district boundaries.

Dale Miller replied we don't have that information with us tonight.

Kelly Farber asked does the 20 acre rule apply currently in the Derby Area of Influence?

Dale Miller replied what you have now is a 2 acre minimum lot size but the subdivision regulations require that if you create a lot that is less than 20 acres, it has to be platted.

Kelly Farber stated if a property owner is currently in the Derby Area of Influence, and that encompasses the portion of the county that's in the Derby area, then they can't just develop two acre lots.

Dale Miller replied that's the rule as it exists today. All this would do is add a layer in the process. The zoning regulations will state you would have to have a minimum lot size of 20 acres. The landowner would have to file a conditional use application to get out from under the LLO district so that you could create a lot size less than 20 acres. This overlay district would not apply to any property that is currently less than 20 acres.

Sue Wright asked how many property owners are in this area and how many acres are involved?

Dale Miller replied we sent notices to 198 property owners for this hearing and a total of 961 letters to meet the notice requirements.

Chairman Tauer asked did you have any feedback?

Dale Miller replied no.

Dale Miller stated we went to the City of Mulvane a week ago tonight and they recommended approval. What we are asking you to do is a two step process. If you feel it's appropriate, we are asking that you recommend approval for the amendment to the zoning code text and to recommend approval that it be applied to the properties that are 20 acres or larger.

PUBLIC HEARING OPENED:

Bob Kennedy stated they put out a 30 year plan and showed Derby city limits stopping at 87th Street South. If that's 30 years in the future why are we looking at this now? Another question I have is, if I live on a large lot and I would like to have a smaller lot. Am I understanding that I can't buy a 5 acre piece of ground and build a house on it?

Dale Miller replied as it is currently proposed it doesn't prohibit anyone from buying a lot smaller than 20 acres, it just would require the extra step of getting rezoned so it is no longer subject to the LLO district and platting would be required on anything less than 20 acres just like it does today.

Bob Kennedy asked what would the expense of that process be?

Dale Miller replied a zone change is roughly \$330.00 plus \$22.00 per acre, and the cost of the ownership list from a title company.

Chairman Tauer stated to answer your question as to why we are doing this now as opposed to 2030, a lot of decisions that the cities of Derby and Mulvane and Sedgwick County make are related to future land use and how the utilities will be installed when properties are divided into smaller pieces. It makes it a lot more difficult to spread those costs for water, streets, sewer, etc. when you have the 2 to 5 acre lots to service.

Bud Newberry stated I would like to address one thing that Mr. Kennedy said. If you can find an existing piece of property that is 5 acres, you won't have to go through the zoning change because this action will not affect the zoning on pieces of property that are already less than 20 acres.

Bob Kennedy stated so this is basically to control development of anything less than 20 acres.

Bud Newberry replied it's to slow down or discourage the practice of taking pieces of property that are larger than 20 acres and breaking them into pieces less than 20 acres. It doesn't affect anything that is already less than 20 acres.

PUBLIC HEARING CLOSED:

Kelly Farber asked what is the perceived process when that future growth does get out to the areas that have these 20 acre or larger lots? If you have 80 acres that has four 20 acre lots and four home sites built on it and the city grows out to that point. Would those property owners be charged a higher tax since they are surrounded by city property?

Bud Newberry replied being annexed into the city does cause your taxes to go up. However, the city won't ask you to change the use of your property because we annexed you into the city. If we put in streets and utilities, it's possible that they could get additional taxes through assessments.

Tasha Brackeen asked it's not a given that a property owner will be granted the new zoning just because they go through the rezoning process, it's still subject to the Board of Zoning Appeals?

Bud Newberry replied it's subject to approval, there is no guarantee that it will be granted.

Kelly Farber asked were there any other considerations as far as determining the 20 acre lot size?

Scott Wadle Advanced Plans Division for MAPD replied the committee arrived at the 20 acres because it matched up with platting regulations. The committee did explore using

the subdivision authority to accomplish the same goal, and it still is an option, but they recommended against it because it was not as straight forward.

Kelly Farber asked if there were any criteria identified that would be necessary to meet in order to get the zoning changed?

Scott Wadle replied we didn't go to that depth simply because the conditions would vary for each property.

Chairman Tauer led discussion and review of the findings as presented in the MAPD staff report. The consensus of the Commission was to approve the amendment, based on support of Findings No. 1, 5, and 6.

MOTION: Jack Hezlep motioned to approve amendment.

SECOND: Pat Baer

VOTE: 6-2-0, Brackeen and Farber opposed motion.

AGENDA ITEM NO: 2

Oliver Avenue, a principal arterial road. The site is located about ¼ mile east of K-15 (Southeast Boulevard). The site will not require sewer or water service beyond what the project will provide itself.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this site as “Employment/Industry Center.” It is shown for “Industrial Phase” on the 47th-55th Street South Joint Area Plan Future Land Use Concept. A Conditional Use for a water booster pumping station (Utility, Major) conforms to both of these designations.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan and landscape plan.
2. Construction of improvements shall be completed within one year of approval of the Conditional Use.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property to the north, northeast and northwest is open pasture land zoned IP-A, and the portion located to the north and northeast is within the AOD. The McConnell Air Force Base runway begins about ¾ mile to the northeast. The land to the southeast is located within the city limits of Derby. It is in agricultural use although it has been zoned and platted for warehouse type use. The land to the south and southwest is zoned LC Limited Commercial (“LC”) and RR Rural Residential (“RR”) and is developed with single-family residences, on unplatted tracts ranging from 0.4 acres to one acre in size.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed as zoned for IP-A; however, approval of the Conditional Use for Utility, Major, should be compatible.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed new pump station should not have any greater impact than the range of other industrial type uses proposed for the area.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The purpose of the project is to provide a safe

DISCUSSION:

Sue Wright asked how common is it to store chlorine and ammonia? What are the risks?

Sarah Unruh with PEC replied these chemicals are commonly used together in water treatment, and in this facility, they are in completely separate rooms and are injected through separate pipes through the wall. We don't foresee any risks. The chemicals we will be using are dry chemicals that are contained in individual units inside the building and we don't have a concern over anything leaking into the ground. Nothing drains out into the septic system.

PUBLIC HEARING OPENED:

PUBLIC HEARING CLOSED:

Chairman Tauer led discussion and review of the findings as presented in the MAPD staff report. The consensus of the Commission was to approve the amendment, based on support of said findings.

MOTION: Kelly Farber motioned to approve.

SECOND: Tasha Brackeen

VOTE: 8-0, unanimously approved

AGENDA ITEM NO: 3

DESCRIPTION: Vacation Request – Vacate a portion of the platted Access Control located on Lots 3 & 4, Block C, The Oaks, an Addition to Derby, Sedgwick County, Kansas. (Public Hearing)

GENERAL LOCATION: On the northwest corner of the intersection of Rock Road and Tall Tree Road

APPLICANT: William Lusk, Jr. Living Trust

REASON FOR REQUEST: Create new access opening to Rock Road and reduce existing access control on Tall Tree.

BACKGROUND INFORMATION:

- The subject site is located on the northwest corner of the intersection of Rock Road and Tall Tree Road at the east entrance to The Oaks addition.

- The plat for The Oaks was approved by action of the Derby Planning Commission on October 19, 2000, and the City Council on January 25, 2001.
- The B-3 zoning for this property was approved by the City Council on July 11, 2000, but did not take effect until April 2, 2001, the date of publication of the ordinance.
- When The Oaks was platted, one major opening was shown on the west side of Rock Road, approximately 525' north of Tall Tree Road along the north line of Lot 3, leaving Lot 4 without direct access to Rock Road. Complete access control was also platted for the first 100' going west from Rock Road along the south line of Lot 4. (north line of Tall Tree Road)
- The developer of a proposed Braum's restaurant on Lot 4 is requesting that the city grant a vacation of 30 feet of the control adjacent to the north line of Lot 4 to provide access to the restaurant and also future additional development on Lot 3.
- This request complies with the design standards in the Subdivision Regulations that allows the first access point off of an arterial street to be placed 200 feet from the closest intersection. This application is asking to place an entrance approximately 250' from the Tall Tree intersection.
- The developer is also asking that 15 feet of the platted access control on Tall Tree be vacated so the placement of an entrance to the restaurant can be located near the center of the site on the south side, which will line up with the proposed circulation aisle.
- The proposed vacated portions of the platted access controls measure 15 feet on Tall Tree and 30 feet on Rock Road.
- The City Engineer has reviewed and approved this request.
- The legal descriptions for these proposed vacation cases are:

The west 15.00 feet of the east 100.00 feet of the south line of Lot 4, Block C, The Oaks, an Addition to Derby, Sedgwick County, Kansas, and;

That part of the most easterly line of Lot 3, Block C, The Oaks, an Addition to Derby, Sedgwick County, Kansas described as follows: Beginning at the most easterly corner common to said Lot 3 and Lot 4 in said Block C; thence N09°01'00"E along the most easterly line of said Lot 3, 12.02 feet to the deflection corner in said most easterly line; thence N00°29'09"E along the most easterly line of said Lot 3, 18.11 feet to a point of termination.

STAFF COMMENTS:

- The Notice of Public Hearing was mailed to all affected property owners and to the utility companies on May 3, 2011.
- To date, staff has not received any public comment either written or verbal concerning this Vacation Request.
- None of the utility companies who responded to this notice objected to this request.

RECOMMENDATION:

Adopt a Resolution recommending approval of the Vacation of a portion of the platted access control located along the south line of Lot 4, Block C, and the east line of Lot 3, Block C, The Oaks, an Addition to Derby, Sedgwick County, Kansas.

Attachments: Site Map
 Legal Description of Vacation area
 Surveyor Drawing

DISCUSSION:

Chairman Tauer commented that the east access to Tall Tree looks like it comes out about where the reserve for the signage for "The Oaks" is located. Will the applicant work with the city to place one-way signage in that reserve?

Bud Newberry replied yes, we will look at that.

Chairman Tauer asked is there a plan in the future to add additional right turn lanes along Rock Road?

Bud Newberry replied not that I'm aware of. There is an existing decel lane along this section of Rock.

Phil Meyer with Baughman Companies replied the reason the right of way flares out on our drawing is that it allows your City Engineer at a later date to use it as a turn lane if he desires. It could also be used for utilities or a right turn lane. The additional right-of-way was requested by the city during platting for possible future use.

Chairman Tauer stated after observing what we have at the Quick Trip at Patriot and Rock Road, when you're pulling out of the driveway onto Patriot, the tendency is for traffic traveling south on Rock to whip around the corner and head west on Patriot sooner than you can get out of the way. I wanted to have an idea how close together that turn lane and the first driveway are going to be.

Phil Meyer stated we have been working with city staff on the site plan and the location of the drives. You will notice that the first drive off of Tall Tree lines up to go right in front of the building. Charlie Brown and Dan Squires wanted that drive that far east so the reserve will keep them from turning left. We plan on this drive functioning as a right-in / right-out.

Gunter Hansen asked will that be a right-in / right-out entrance on Rock Road?

Bud Newberry replied we haven't received that information yet. That issue will be taken up during the Site Plan Review.

Keith Volz asked is the drive on the north going to be a shared drive in the future?

Phil Meyer replied yes, that is our plan.

Keith Volz asked will there be a cross access agreement?

Bud Newberry replied we haven't discussed that yet but I believe the assumption is that that entrance is going to serve the property to the north also.

Phil Meyer stated all of lots 3 and 4 have a cross access/cross circulation agreement that will be extended as the properties are developed.

PUBLIC HEARING OPENED:

Shane Phillips of Phillips Family Real Estate stated we own the property directly across Rock Road on the east side. The only concern I have was mentioned earlier about the right-in / right-out. I pull out of my driveway 4 or 5 times a day and you can't get in or out if you are going across traffic. I want to strongly recommend researching the right-in / right-out only, much like what was done at Target. There is a potential for a lot of accidents right there.

PUBLIC HEARING CLOSED:

MOTION: Keith Volz motioned to approve.

SECOND: Kelly Farber

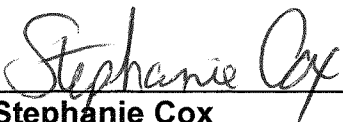
VOTE: 7-0-1, Pat Baer abstained

MOTION TO ADJOURN: Chairman Tauer


SECOND: Keith Volz

VOTE: 8-0

Meeting adjourned at 8:00 PM.



Stephanie Cox
Recording Secretary



Eric Tauer
Chairman