

# STAFF REPORT – ZONING CASE

## TOPEKA PLANNING DEPARTMENT

PLANNING COMMISSION DATE: Monday, October 16, 2017

---

### APPLICATION INFORMATION:

**APPLICATION CASE NUMBER / NAME:** Z17/5 By: Franklin E. Webb

**REQUESTED ACTION / CURRENT ZONING:** Zoning change from “RR-1” Residential Reserve District and “C-2” Commercial District **ALL TO** “R-1” Single Family Dwelling District

**APPLICANT / PROPERTY OWNER:** Franklin E. Webb

**APPLICANT REPRESENTATIVE:** Annette Harper, Coldwell Bank, Griffith, & Blair  
Mark Boyd, Schmidt, Beck, and Boyd Engineering LLC

**PROPERTY LOCATION / PARCEL ID:** 5127 SW Wanamaker Road (Northwest intersection of SW 53<sup>rd</sup> and Wanamaker)/ PID: 1492904001013000

**PARCEL SIZE:** 38 acre parcel (“C-2” comprises 18.36 acres and “RR-1” comprises 19.64 acres of the subject property)

**STAFF PLANNER:** Annie Driver, AICP, Planner II

**RECOMMENDATION:** **APPROVAL**

**RECOMMENDED MOTION:** Based on the findings and analysis listed below in the staff report, I move to recommend to the Governing Body **APPROVAL** of the reclassification of the subject property from “RR-1” Residential Reserve District and “C-2” Commercial District **ALL TO** “R-1” Single Family Dwelling District

---

### PROJECT AND SITE INFORMATION

**PROPOSED USE / SUMMARY:** To allow the buyer to demolish the existing residence along with accessory buildings and construct a new single-family residence on the entire 38 acre property, as well as continue to use the remaining property as pasture for livestock.

**DEVELOPMENT / CASE HISTORY:** The subject property has historically been used for a rural residence and surrounding pasture and other agricultural uses. The property was annexed in 2007 near the same time as Lauren’s Bay Estates to the north when there was an interest to develop a commercial center at this corner.

There have been several past zoning actions on the property responding to requests for commercial zoning (“C-4” zoning and “C-2” zoning actions), which were either disapproved by City Council or withdrawn prior to proceeding to City Council. The most recent case in 2009 (case #Z09/2) was approved by the City Council and rezoned 18.36 acres of the 38 acre property from “RR-1” Residential Reserve District to “C-2” Commercial District. The property has been marketed for commercial use with no buyers for nearly 10 years since the rezoning.

**PHOTO:**



*Existing residence*

**ZONING AND CHARACTER OF  
SURROUNDING PROPERTIES:**

South: Zoning - “RR-1” Residential Reserve District/Land use – rural residential lots (Shawnee County)

North: Zoning - “R-1” Single-Family Dwelling District and “RR-1” Residential Reserve District/Land use – vacant residential platted lots (Lauren’s Bay Estates); rural residential lots (Shawnee County/City limits)

West: Zoning – “RR-1” Residential Reserve District/Land use – rural residential lots and agriculture land (Shawnee County)

East: Zoning - RR-1” Residential Reserve District/Land use –USD 437 administration office and bus depot; Jay Scheidler Elementary (Shawnee County)

**DEVELOPMENT STANDARDS  
AND GUIDELINES**

**PURPOSE, USE STANDARDS:**

The intent of the “R-1” Single Family Dwelling District is to *“provide for the use of detached single-family dwellings together with specified accessory uses. . . It is intended that the character and use of this district be for housing and living purposes free from the encroachment of incompatible uses.”*

Permitted uses in “R-1” include: Single – family dwellings, Group homes, Residential Care Facilities, Schools, Religious Assembly, Parks/Common open spaces. “Agriculture” is not typically permitted in

"R-1 zoning. However, the continued use of the property as pasture for livestock and agriculture is considered a legal non-conforming use since that use has continued on the land since annexed in 2007.

TMC 18.55 defines "Agriculture" as *"Land devoted to the production of plants, animals, fish, or horticultural products, including but not limited to: forages, grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef, cattle, sheep, swine and horses; aquaculture; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes; suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition."*

**DIMENSIONAL STANDARDS:**

Setbacks: Side – 7'; Rear/Front – 30'

Building height is restricted to 42 ft. in "R-1" zoning.

**COMPREHENSIVE PLANS:**

Land Use and Growth Management Plan – 2040- Mixed Use Node

**TRANSPORTATION/MTPO PLANS:**

A Bicycle Route #6- South Loop Bikeway is planned along SW Wanamaker and east bound on SW 53<sup>rd</sup> Street. Wanamaker Road has sidewalks along both sides.

---

**OTHER FACTORS**

**SUBDIVISION PLAT:**

The property is not platted. Development of the property for one, single family residence meets the platting exemption criteria. A plat is required if connection to City sewer or water service is required.

**FLOOD HAZARDS, STREAM  
BUFFERS:**

A Type II stream buffer crosses the southeastern corner of the property. The City stream buffer regulations will apply to any development in the stream buffer setback area.

**UTILITIES:**

The existing residence is served by Rural Water District #3 and an existing septic tank and lateral field for sewer. A permit from the County Health Agency is required to replace the septic system and lateral field. At this time, connecting to sanitary sewer is not economically feasible for the one house since the closest gravity sewer main is 1700 ft. north or they need to install a pump station and connect to the force main on the U.S.D. 437 property across Wanamaker Road.

**TRANSPORTATION/TRAFFIC:**

No issues

**HISTORIC PROPERTIES:** N/A

**NEIGHBORHOOD INFORMATION MEETING**

The applicant conducted a neighborhood information meeting on Tuesday, September 26, 2017 at the Rural Water District #3 office located at 4926 SW Wanamaker Road. Six surrounding residents attended the meeting. The discussion at the meeting focused primarily on the history of the neighborhood's opposition to the previous rezoning actions. Questions arose about the continued use of agriculture in a "R-1" zoning district. The applicant's report is attached.

**REVIEW COMMENTS BY CITY DEPARTMENTS AND EXTERNAL AGENCIES**

**PUBLIC WORKS/ENGINEERING:** Connection to sewer is not required for the single-family dwelling. The owner will be required to connect when sewer becomes available to the property.

**WATER POLLUTION CONTROL:** None at this time

**FIRE:** None at this time

**DEVELOPMENT SERVICES:** A building permit is required.

---

**KEY DATES**

**SUBMITTAL:** September 1, 2017

**NEIGHBORHOOD INFORMATION MEETING:** September 26, 2017

**LEGAL NOTICE PUBLICATION:** September 20, 2017

**PROPERTY OWNER NOTICE MAILED:** September 22, 2017

---

**STAFF ANALYSIS**

**CHARACTER OF NEIGHBORHOOD:** The proposed "R-1" zoning is compatible with the surrounding neighborhood character. The character of the neighborhood is comprised of rural residences located on 3 acre or larger lots and agricultural land to the south, east, and west. Lauren's Bay Estates and adjoining subdivisions (including Lauren's Bay Estates No. 2, Villas Sub, Villas Sub 2 and 3, and Lauren's Bay Subdivision) were platted in or around 2008 and lie to the northwest of the subject property and have been slow to develop since that time. Approximately 427 (plus or minus) platted lots remain undeveloped within these subdivisions. U.S.D. 437 Auburn – Washburn School District offices and Jay Scheidler Elementary School lie adjacent to the property on the east side of SW Wanamaker.

**ZONING AND USES OF PROPERTY NEARBY:** The proposed "R-1" zoning is consistent with the zoning to the north and is compatible with other surrounding zoning. The zoning of nearby properties is "RR-1" Residential Reserve District

and used for agriculture, pasture, or rural residential land uses. Lauren's Bay Estates lies to the north and is zoned "R-1" Single-Family Dwelling District. Unified School District #437 administration office and bus depot and Jay Scheidler Elementary school west of the property across SW Wanamaker Road and are also zoned "RR-1" Residential Reserve District.

**LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION:** The subject property has historically been used for rural residential, agriculture, and pasture land. The existing single-family residence was constructed in 1988 with the remaining land used for agriculture purposes. The subject property was annexed in 2007 when there was intent from a developer to construct a commercial center at the intersection. There has been little interest from a commercial developer in the 10 years since the annexation occurred.

**CONFORMANCE TO COMPREHENSIVE PLAN:** The Land Use and Growth Management Plan-2040 (LUGMP) designates the area as a *Mixed Use Node*. *Mixed Use Nodes* are defined in the plan as those areas that exhibit two or fewer corners which are zoned or developed in a commercial manner. The Mixed Use category is intended to incorporate neighborhood commercial, office, and residential developments in a compact manner. "Small" Mixed Use nodes are considered areas where developments should not exceed 1-10 acres. The City's policies regarding infrastructure availability and infill development have changed since 2007 when the property was annexed with the 2015 update to the Land Use and Growth Management Plan – 2040. The LUGMP focuses on compact and mixed use development that lowers municipal infrastructure service costs. City sewer and water are not available. The subject property was annexed and zoned far in advance of having all urban services to support the development and under today's land use policies would be considered a premature rezoning.

In the future, neighborhood commercial uses may still be supported at this intersection since it is at the corner of two arterial streets, but that development should be rezoned when the area is ready to support it and a development would likely need to be much smaller in scale and include adjacent residential uses. The rezoning will not inhibit future use of the property for these purposes as it is largely reserved for agriculture uses and no further subdivisions are proposed. Therefore, the proposed rezoning request is supported by the Comprehensive Plan.

**THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES OF WHICH IT HAS BEEN RESTRICTED:** The subject property is not yet suitable for uses to which it has been restricted or entitled since the property is not yet served by City sewer or water. The City's policies regarding infrastructure availability and infill development have changed since 2007 when the property was annexed with the 2015 update to the Land Use and Growth Management Plan – 2040. The LUGMP stresses mixed uses, compact and infill development in areas that have the infrastructure required to support urban development. Since extension of the gravity sanitary sewer from the north or adding a pump station would be a significant cost, the area is not yet suited to support commercial development on this 18.36 acre tract. SW 53<sup>rd</sup> Street is not built to support urban development, an 18.36 site with "C-2" zoning allows for regional scale commercial shopping centers.

**THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES:** The change in zoning to "R-1" Single Family Dwelling District to allow one, single-family residence will have no negative near-term impact on surrounding properties as it is currently developed for a single-family residence.

**THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER:** The hardship imposed upon the individual landowner is evident since it has been zoned commercial for eight years without commercial prospects. Leaving the property zoned commercial when the intent is now to construct a new dwelling presents a hardship on the owner since they may be taxed as a commercial property. The gain to the public health, safety and welfare would be to eliminate the potential for a large commercial development on this site within an area that is not yet served with the entire range of services that is needed to support that development.

**AVAILABILITY OF PUBLIC SERVICES:** City of Topeka sanitary sewer or water is not available to serve the property. Serving the property would require an extension of the gravity sewer main from Lauren's Bay Estates at least 1700 ft. away or the installation of a pump station on this property in order to connect to the force main east of Wanamaker located at the USD 437 property. It is not economically feasible to extend sewer for one single family residence. The Shawnee County Health Agency will need to approve a permit for a new septic and lateral field if the location is altered. Water service to the property is supplied by Rural Water District #3.

---

## **RECOMMENDATION:**

**STAFF RECOMMENDATION:** Based on the above findings and analysis the Planning Department recommends **APPROVAL** of the zoning reclassification from "RR-1" Residential Reserve District and "C-2" Commercial District **ALL TO "R-1" Single Family Dwelling District.**

**PLANNING COMMISSION MOTION:** Based on the findings and analysis listed in the staff report, I move to recommend to the Governing Body **APPROVAL** of the reclassification of the subject property from "RR-1" Residential Reserve District and "C-2" Commercial District **ALL TO "R-1" Single Family Dwelling District.**

### **Attachments:**

- Aerial Map
- Zoning Map
- Future Land Use Map
- NIM Report and Attendance