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City Council Agenda

**City Council Chambers
214 SE 8th Street
Topeka, Kansas 66603**

October 9, 2007
6:00 PM

City Manager: Norton N. Bonaparte, Jr.

Mayor: William W. Bunten

Councilmembers

Lana Kennedy	District No. 1	Deborah Swank	District No. 6
John Alcala	District No. 2	Brett Blackburn	District No. 7
Sylvia E. Ortiz	District No. 3	Jeff Preisner	District No. 8
Jack Woelfel	District No. 4	Richard Harmon	District No. 9
Bill Haynes	District No. 5		

Addressing the Council: No person shall address the Council during a Council Meeting, unless they have notified the City Clerk by 5:00 P.M. on the day of any Council Meeting of their desire to speak on a specific matter on the published meeting agenda or during the public comment portion of the Council Meeting. This limitation shall not apply to items added during the course of a meeting. The Council does not take action with respect to any subject not on the agenda unless added to the agenda by a two-thirds vote of the Council

Persons addressing the City Council will be limited to four (4) minutes of public address on a particular agenda item. Debate, question/answer dialogue or discussion between Councilmembers will not be counted towards the four (4) minute time limitation. The Chair may extend time with the unanimous consent of the Council or the Council by affirmative vote of five (5) members may extend the four (4) minute limitation.

Persons will be limited to addressing the City Council one (1) time on a particular matter unless otherwise allowed by an affirmative vote of five (5) members of the City Council.

Citizens wishing to offer Public Comment may sign up by phoning the City Clerk's office at 368-3940.

(Agendas are available on Thursday afternoon in the City Clerk's office, 215 SE 7th – Room 166 and on the City's web site at <http://www.topeka.org>)

INVOCATION:

PLEDGE OF ALLEGIANCE:

- 1. **PROCLAMATIONS:**
 "National 4-H Week"
 "Fire Prevention Week"
- 2. **PRESENTATIONS:**
 "None scheduled at this time."
- 3. **ROLL CALL:**
- 4. **CONSENT AGENDA:**

A. Resolution - St. John's Lutheran Church - Noise Exception

 [ATTACHMENTS](#)

A RESOLUTION introduced by Councilmember Lana Kennedy granting St. John's Lutheran Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions. *(Council District No. 1)*

(The Oktoberfest Celebration will take place during the hours of 12:00 p.m. and 4:00 p.m. on October 14, 2007.)

B. Resolution - Topeka Natural Food Co-Op - Noise Exception

 [ATTACHMENTS](#)

A RESOLUTION introduced by Councilmember Lana Kennedy granting Topeka Natural Food Co-Op an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions.*(Council District No. 1)*

(The Customer Appreciation event will take place during the hours of 1:00 p.m. and 5:00 p.m. on October 13, 2007.)

C. Resolution - Authorizing Signatures

 [ATTACHMENTS](#)

A RESOLUTION of the City of Topeka naming banks and savings institutions that are designated as depositories for all City of Topeka accounts and authorizing signatures and rescinding City of Topeka Resolution No. 7958.

(The resolution adds the newly selected City Controller as an authorized signature while removing one authorized signature due to retirement.)

D. Resolution - Municipal Investment Pool

 [ATTACHMENTS](#)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., concerning the City of Topeka's participation in the State of Kansas Municipal Investment Pool and rescinding City of Topeka Resolution No. 7445.

(The resolution changes the names of the employees authorized to enact transactions with the Municipal Investment Pool to reflect recent staffing changes.)

E. MINUTES of the regular meeting of October 2, 2007

F. APPLICATIONS:

5. UNFINISHED BUSINESS:

A. Communication - Mt. Carmel Baptist Church - Civil Claim

A COMMUNICATION authorizing settlement of claim by Mt. Carmel Baptist Church against the City of Topeka. *(The Council disapproved the communication on October 2, 2007.) (The motion to consider the payment of clean-up expenses was deferred from the meeting of October 2, 2007.)*

(Claimant seeking payment of the claim by the City.)

B. Ordinance - Initiation of Condemnation Proceedings

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing initiation of condemnation proceedings to acquire property interests for Sewer Improvement Project No. 40936-01 which provides for sanitary sewer service to Horseshoe Bend Subdivision and Street Improvement Project No. 60619-00 which provides for paving certain streets located in Horseshoe Bend Subdivision. Final Reading. *(Council District No. 5)*

(The ordinance would initiate condemnation proceedings to acquire property for the improvement projects.)

C. Ordinance - Standard Traffic Ordinance Amendments

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 142-152 concerning amendments to the Standard Traffic Ordinance, and specifically repealing said original code section and City of Topeka Ordinance No. 18806. Final Reading.

(The amendment to STO 107 relates to unattended motor vehicles, allowing exceptions for emergency vehicles; and the amendment to STO 114.1 allows for ATV's to be operated on city streets by law enforcement officers. Approval would codify the ordinance that was adopted previously by the Council and does not change existing law.)

D. Ordinance - Work-Site Utility Vehicles

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., creating City of Topeka Code Section 142-195 regarding the operation of work-site utility vehicles on the streets within the corporate limits of the City of Topeka. Final Reading.

(The ordinance would permit operation of work site utility vehicles within the corporate limits of the City, provided the vehicle is properly equipped with lights, turn signals and other equipment requirements in K.S.A. Chapter 8, Article 17. The primary reason to authorize such vehicles is to allow City parking enforcement officers to utilize these vehicles in enforcing parking regulations.)

E. Project Budget and Ordinance - Traffic Signal Improvement Project No. 14127

 [ATTACHMENTS](#)

A PROJECT BUDGET in the amount of \$180,000 and **AN ORDINANCE** introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 14127, which provides for replacing traffic signal at Washburn Avenue and 17th Street, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka. Final Reading. *(Council District Nos. 3 and 6)*

(Approval provides for the replacement of the existing traffic signal, as well as, minor sidewalk and ramp work at SW Washburn Avenue and SW 17th Street. Approximately \$150,000 of the construction and inspection costs will be funded by Federal Aid Safety funds and the remaining \$30,000 would be funded by General Obligation Bonds.)

6. NEW BUSINESS:

A. Resolution - Board of Shawnee County Commissioners (CU07/6)

 [ATTACHMENTS](#)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., in accordance with Section 48-21.02(c)(3) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a correctional placement residence or facility general on property currently zoned "I-2" Heavy Industrial District and located at 818 SE Adams Street in the City of Topeka, Kansas. *(CU07/6) (Council District No. 1) (Planning Commission recommended approval.) (Planning Department recommended approval.)*

(Approval would allow use of the site for a correctional placement residence or facility general by Shawnee County Department of Corrections.)

B. Ordinance - Weekly Expenditures - September 17-23, 2007

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period September 17, 2007, through September 23, 2007, and enumerating said expenditures therein. First and Final Reading.

7.

ZONING:

A. Ordinance - Michael J. and Bonnie M. Gish (Z07/17)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 1507, 1515 and 1517 East 6th Avenue from “X-1” Mixed Use District TO “C-4” Commercial District. **Final Reading.** (Z07/17) (Council District No. 3)(Planning Commission recommended approval by a vote of 5-1-0.) (Planning Department recommended disapproval.)

(Approval authorizes the existing vehicle repair business to conform to the current zoning district.)

B. Ordinance - Paulette Danielson (Z07/18)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by proposing zoning on property located at 103 NW Elm Row Avenue from “M-1” Two Family Dwelling District TO “O&I-2” Office and Institutional District. **Final Reading.** (Z07/18) (Council District No. 2) (Planning Commission recommended approval by a vote of 6-0-0.) (Planning Department recommended approval.)

(Approval would allow for office development.)

C. Ordinance - Wanamaker North L.C. (Z07/19)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 1025, 1029 and 1035 SW Wanamaker Road from “R-1” Single-Family Dwelling District, “O&I-1” Office and Institutional District and “C-4” Commercial District ALL TO “C-2” Commercial District. **Final Reading.** (Z07/19) (Council District No. 9)(Planning Commission recommended approval 6-0-0.) (Planning Department recommended approval.)

(Approval would allow development of the property for neighborhood commercial uses.)

8. FIRST READINGS:

A. Ordinance - Strathman Sales Co., Inc. (V07E/11)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a platted utility easement in Jefferson Square Subdivision No. 2 located at the southwest corner of SE Quincy Street and SE Lakewood Boulevard, City of Topeka, Shawnee County, Kansas. **First Reading.** (V07E/11) (Council District No. 3)

(Approval would vacate a portion of a platted utility easement and establish a necessary sanitary sewer easement.)

9. MISCELLANEOUS:

-

10. PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL:

-

11. PUBLIC COMMENT:

-

12. ADJOURNMENT:

-



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 20, 2007

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DATE: October 9, 2007

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

"National 4-H Week"
"Fire Prevention Week"

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CATEGORY/SUBCATEGORY

CIP PROJECT: No

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PAGE #:

DOCUMENT DESCRIPTION:

"None scheduled at this time."

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 28, 2007

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DATE: October 9, 2007
CONTACT PERSON: Lana Kennedy DOCUMENT #:
SECOND PARTY/SUBJECT: Yvonne Berry PROJECT #:
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by Councilmember Lana Kennedy granting St. John's Lutheran Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions. *(Council District No. 1)*

(The Oktoberfest Celebration will take place during the hours of 12:00 p.m. and 4:00 p.m. on October 14, 2007.)

POLICY ISSUE:

None

STAFF RECOMMENDATION:

None

BACKGROUND:

Noise exception for a live band and festivities located at 901 SW Fillmore Street during specified date and time.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

None

ATTACHMENTS:

[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION introduced by Councilmember Lana Kennedy, granting St. John's Lutheran Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions.

WHEREAS, City of Topeka Code Section 54-148 makes it unlawful for any person to make, continue or cause to made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health or safety or others within the limits of the city; and

WHEREAS, City of Topeka Code Section 54-148 authorizes the City Council to grant exceptions to the prohibitions of this code section upon request and a showing that the proposed activity does not offend the spirit of the findings of City of Topeka Code Section 54-146; and

WHEREAS, St. John's Lutheran Church has requested that it be granted an exception to the provisions of City of Topeka Code Section 54-148 for the purposes, dates and times described herein, and

WHEREAS, upon review of the application of St. John's Lutheran Church, the Council of the City of Topeka does hereby find that the requested activity does not offend the spirit of the findings of City of Topeka Code Section 54-146.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Topeka that St. John's Lutheran Church is hereby granted an exception from the provisions of City of Topeka Code Section 54-148 for a live band and festivities

at the Oktoberfest celebration located at 901 SW Fillmore Street during the hours
of 12:00 noon and 4:00 p.m. on October 14, 2007.

ADOPTED and APPROVED by the City Council _____.

William W. Bunten, Mayor

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 3, 2007

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DATE: October 9, 2007
CONTACT PERSON: Lana Kennedy DOCUMENT #:
SECOND PARTY/SUBJECT: Devrin Forte PROJECT #:
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by Councilmember Lana Kennedy granting Topeka Natural Food Co-Op an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions. *(Council District No. 1)*

(The Customer Appreciation event will take place during the hours of 1:00 p.m. and 5:00 p.m. on October 13, 2007.)

POLICY ISSUE:

None

STAFF RECOMMENDATION:

None

BACKGROUND:

Noise exception for live band located at 503 SW Washburn Avenue during specified date and time.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

None

ATTACHMENTS:

[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION introduced by Councilmember Lana Kennedy granting Topeka Natural Food Co-Op an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions.

WHEREAS, City of Topeka Code Section 54-148 makes it unlawful for any person to make, continue or cause to made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health or safety or others within the limits of the city; and

WHEREAS, City of Topeka Code Section 54-148 authorizes the City Council to grant exceptions to the prohibitions of this code section upon request and a showing that the proposed activity does not offend the spirit of the findings of City of Topeka Code Section 54-146, and

WHEREAS, Topeka Natural Food Co-Op has requested that it be granted an exception to the provisions of City of Topeka Code Section 54-148 for the purposes, dates and times described herein, and

WHEREAS, upon review of the application of Topeka Natural Food Co-Op, the Council of the City of Topeka does hereby find that the requested activity does not offend the spirit of the findings of City of Topeka Code Section 54-146.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Topeka that Topeka Natural Food Co-Op is hereby granted an exception from the provisions of City of Topeka Code Section 54-148 for a live band at the

Customer Appreciation event located at 503 SW Washburn Avenue, during the
hours of 2:00 p.m. and 4:00 p.m. on October 13, 2007

ADOPTED and APPROVED by the City Council _____.

William W. Bunten, Mayor

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 21, 2007

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DATE: October 9, 2007
CONTACT PERSON: Curtis Cox
SECOND PARTY/SUBJECT: PROJECT #:
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION of the City of Topeka naming banks and savings institutions that are designated as depositories for all City of Topeka accounts and authorizing signatures and rescinding City of Topeka Resolution No. 7958.

(The resolution adds the newly selected City Controller as an authorized signature while removing one authorized signature due to retirement.)

POLICY ISSUE:

None.

STAFF RECOMMENDATION:

Approve the Resolution

BACKGROUND:

This Resolution adds the newly selected City Controller as an authorized signature while removing one authorized signature due to retirement.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Draft Resoution](#)

RESOLUTION NO. _____

A RESOLUTION of the City of Topeka naming banks and savings institutions that are designated as depositories for all City of Topeka accounts and authorizing signatures and rescinding City of Topeka Resolution No. 7958.

BE IT RESOLVED by the Council of the City of Topeka, Kansas that the following named banks and savings institutions are hereby designated to be depositories which can accept deposits from any and all accounts of the City:

Alliance Bank
Capital City Bank
Capitol Federal Savings
Central National Bank
Columbian Bank
Commerce Bank & Trust
Community National Bank
Fidelity State Bank & Trust
Intrust Bank
Kaw Valley State Bank & Trust
Silver Lake Bank
UMB Bank
Western National Bank

BE IT FURTHER RESOLVED that the above-named banks and savings institutions may accept all checks, drafts, bills of exchange, or other orders for the payment of money when drawn on or addressed to any of the banks and savings institutions, if the facsimile signatures of the following persons are imprinted thereon:

Norton N. Bonaparte, Jr., City Manager of the City of Topeka

Pam Simecka, City Controller

Curtis R. Cox, City Treasurer of the City of Topeka

BE IT FURTHER RESOLVED that any of the banks and savings institutions may accept all checks, drafts, bills of exchange, or other orders for payment of money, when

drawn on any of the banks and savings institutions when the signature of one of the two following persons appears thereon:

Curtis R. Cox

Tina M. Loyd

And the countersignature of the following person appear thereon:

James F. Langford

BE IT FURTHER RESOLVED that checks, drafts or other instruments for payment of money drawn to the order of the City of Topeka shall, when properly endorsed, be accepted by the banks and savings institutions for deposit only to the credit of the City of Topeka.

BE IT FURTHER RESOLVED that Resolution No. 7763 is rescinded and that the foregoing powers and authority outlined herein are to be continued until written notice or revocation has been given to the banks and savings institutions by the City of Topeka.

This Resolution shall become effective on June 15, 2007.

ADOPTED and APPROVED by City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

APPROVED AS TO FORM AND LEGALITY

DATE _____ BY _____



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214 SE 8th Street
Topeka, Kansas 66603

September 21, 2007

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DATE: October 9, 2007
CONTACT PERSON: Curtis Cox
SECOND PARTY/SUBJECT: DOCUMENT #:
CATEGORY/SUBCATEGORY PROJECT #:
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., concerning the City of Topeka's participation in the State of Kansas Municipal Investment Pool and rescinding City of Topeka Resolution No. 7445.

(The resolution changes the names of the employees authorized to enact transactions with the Municipal Investment Pool to reflect recent staffing changes.)

POLICY ISSUE:

None.

STAFF RECOMMENDATION:

Approve the Resolution.

BACKGROUND:

This changes the authorized employees to Jim Langford, Budget and Finance Director; Pam Simecka, City Controller; and Curtis Cox, City Treasurer.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., concerning the City of Topeka's participation in the State of Kansas Municipal Investment Pool and rescinding City of Topeka Resolution No. 7445.

WHEREAS, the undersigned is a municipality, as defined in K.S.A. 12-1675a, hereinafter referred to as "Participant," and from time to time has funds on hand in excess of current needs; and

WHEREAS, it is in the best interests of Participant and its inhabitants to invest funds in investments that yield a favorable rate of return while providing the necessary liquidity and protection of the principal; and

WHEREAS, the Pooled Money Investment Board, hereinafter referred to as "PMIB," operates the Municipal Investment Pool, hereinafter referred to as "MIP," a public funds investment pool, pursuant to K.S.A. 12-1677a, and amendments thereto.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That Participant approves the establishment of an account in its name in the MIP for the purpose of transmitting funds for investment, subject to the MIP Participation Policy adopted by the PMIB, and Participant acknowledges it has received a current copy of such Participation Policy. Participant's taxpayer identification number assigned by the Internal Revenue Service is 48-6028701.

2. That the following individuals are officers or employees of Participant and are each hereby authorized to transfer funds for investment in the MIP, to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of funds:

27 Name Jim Langford Title Director of Budget and Finance

28 Name Curtis R. Cox Title City Treasurer

29 Name Pam Simecka Title City Controller

30 3. That notices required by the PMIB's Municipal Investment Pool Participant
31 Policy shall be provided to:

32 Curtis R. Cox
33 City Treasurer
34 215 SE 7th, Room 358
35 Topeka, Kansas 66603
36 785-368-3902
37 785-368-3975 (Fax)
38

39 4. That this Resolution and its authorization shall continue in full force and effect
40 until amended or revoked by the Participant and until the PMIB receives a copy of any such
41 amendment or revocation, the PMIB is entitled to rely on same.

42 This Resolution is hereby introduced and adopted by the Participant at its regular
43 meeting held on the _____ day of _____, 2007.

44 NOW BE IT FURTHER RESOLVED that the City of Topeka Resolution No. 7445 is
45 hereby rescinded.

46 ADOPTED and APPROVED by City Council _____.

47 CITY OF TOPEKA, KANSAS
48
49
50
51

52 _____
53 William W. Bunten, Mayor

54 ATTEST:
55
56
57

58 _____
Brenda Younger, City Clerk



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SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CIP PROJECT: No

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STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CONTACT PERSON: Eric Smith, Asst. City Attorney **DOCUMENT #:**

SECOND PARTY/SUBJECT: Mt. Carmel Baptist Church **PROJECT #:**

CATEGORY/SUBCATEGORY: 006 Communication / 005 Other

CIP PROJECT: No

ACTION OF COUNCIL: 10/02/07 Deferred one week **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

A COMMUNICATION authorizing settlement of claim by Mt. Carmel Baptist Church against the City of Topeka. (The Council disapproved the communication on October 2, 2007.) (The motion to consider the payment of clean-up expenses was deferred from the meeting of October 2, 2007.)

(Claimant seeking payment of the claim by the City.)

POLICY ISSUE:

Whether the City Council chooses to deny or pay the claim.

STAFF RECOMMENDATION:

Deny the claim based on the facts as presented in claim denial memorandum. City is not liable because the claim arises out of a natural disaster and there is no evidence of negligence on the part of the City.

BACKGROUND:

The claimant alleges that their property at 610 Lime Street was damaged between May 5, 2007 and May 7, 2007 by sewer backup and flood waters in their basement. In a statement to councilmembers on August 14, 2007, Mt. Carmel revised their claim from the original \$60,000 to \$62,938.72.

BUDGETARY IMPACT:

If council approves settlement, \$62,938.72.

SOURCE OF FUNDING:

Water Pollution Control Fund

ATTACHMENTS:

No Attachments Available

Item #12



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DATE: October 9, 2007

CONTACT PERSON: Rusty Rakestraw **DOCUMENT #:**

SECOND PARTY/SUBJECT: Street and Sewer Improvement Projects **PROJECT #:** 60619-00 and 40936-01

CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 002 Condemnations

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing initiation of condemnation proceedings to acquire property interests for Sewer Improvement Project No. 40936-01 which provides for sanitary sewer service to Horseshoe Bend Subdivision and Street Improvement Project No. 60619-00 which provides for paving certain streets located in Horseshoe Bend Subdivision. Final Reading. *(Council District No. 5)*

(The ordinance would initiate condemnation proceedings to acquire property for the improvement projects.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Staff recommends Council approve Condemnation Ordinance.

BACKGROUND:

KSA 26-201 states that the governing body shall by ordinance authorize and provide for the acquisition of the interests to be condemned and for what purpose the same is to be used. The ordinance sets out the individual parcels and specific interests to be acquired. Negotiations are in progress to acquire the property interests for the construction of the projects. When the required lien releases are obtained, the condemnation proceedings will be terminated.

BUDGETARY IMPACT:

To be determined by Condemnation appraisers.

SOURCE OF FUNDING:

Project No. 60619-00 -
Costs are to be paid 97.5% by the Improvement District and 2.5% by General Obligation Bonds.

Project No. 40936-01 -
Costs are to be paid 100% by the Improvement District.

Item #13

ATTACHMENTS:

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing initiation of condemnation proceedings to acquire property interests for Sewer Improvement Project No. 40936-01 which provides for sanitary sewer service to Horseshoe Bend Subdivision and Street Improvement Project No. 60619-00 which provides for paving certain streets located in Horseshoe Bend Subdivision.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That it is hereby declared necessary to condemn and appropriate for the use of the City of Topeka certain lands within the City of Topeka for Sewer Improvement Project No. 40936-01 which provides for sanitary sewer service to Horseshoe Bend Subdivision and Street Improvement Project No. 60619-00 which provides for paving certain streets located in Horseshoe Bend Subdivision, and for other public purposes, said lands being described as follows:

A. City of Topeka Sewer Improvement Project No. 40936-01 for the following parcel:

Parcel No. 1

Owner of Record: Terry Hummer and Yvonne Hummer
4431 NW Green Hills Road
Topeka, KS 66618

Contract Purchaser: NONE

Lienholder of Record: 1. Heritage Bank
3024 SW Wanamaker Road
Topeka, KS 66614
2. Valley View State Bank
7500 W 95th Street
Overland Park, KS 66212

Party in Possession:

Moses Huggins, tenant
600 SE 45th Street
Topeka, KS 66609

Party of Interest:

1. Meadowlark Square, L.L.C.
Case Nos. 01-C-1309 and 03-C-1351
Howard T. Paul, Resident Agent
PO Box 5318
Topeka, KS 66605
2. State of Kansas
Department of Revenue
Case Nos. 06-ST-188, 06-ST-347, 06-ST-1730
915 SW Harrison
Topeka, KS 66625
3. Jim Clark Leasing, LC
Case No. 06-C-361
Keith R. Shore, Resident Agent
5600 SW 29th Street
Topeka, KS 66614
4. Capital City Bank
Case No. 07-C-1065
3710 S Topeka Blvd
Topeka, KS 66609
5. Valley View State Bank
Case No. 07-C-442
Larry G. McLenon, Resident Agent
7500 W 95th Street
Overland Park, KS 66212
6. City of Topeka
Code Compliance Division
620 SE Madison
Topeka, KS 66607
7. Shawnee County Treasurer
Tax Warrant No. 2667
Shawnee County Courthouse
200 SE 7th Street
Topeka, KS 66603

PROPERTY TO BE ACQUIRED:

Permanent Easement P-1 (Sanitary Sewer):

A portion of the West Half of the Southeast Quarter of Section 19, Township 12 South, Range 16 East of the 6th P.M., Shawnee County, Kansas, being a portion of that certain tract described in Deed Recorded December 5, 2002 in Book 3739, page 716 in the Official Records of Shawnee County, Kansas described as follows:

Commencing at the Southeast Corner of the West half of said Southeast Quarter; thence on an assumed Azimuth 358 degrees 18 minutes 47 seconds, coincident with the East line of said West half, 778.11 feet to the Southeast Corner of Horseshoe Bend Subdivision; thence on Azimuth 268 degrees 31 minutes 59 seconds, coincident with the South line of said Horseshoe Bend Subdivision, 246.75 feet to the point of Beginning; thence on Azimuth 178 degrees 31 minutes 59 seconds, perpendicular to said South line, 16.00 feet; thence on Azimuth 268 degrees 31 minutes 59 seconds, parallel to said South line, 16.00 feet; thence on Azimuth 358 degrees 31 minutes 59 seconds, perpendicular to said South line, 16.00 feet to said South line; thence on Azimuth 88 degrees 31 minutes 59 seconds, coincident with said South line, 16.00 feet to the Point of Beginning.

The above-described property to be acquired contains 256 square feet, more or less, and is subject to all rights-of-way, easements, restrictions, and covenants of record, if any.

B. City of Topeka Street Improvement Project No. 60619-00 for the following

parcel:

Parcel No. 1

Owner of Record: Terry Hummer and Yvonne Hummer
4431 NW Green Hills Road
Topeka, KS 66618

Contract Purchaser: NONE

Lienholder of Record: 1. Heritage Bank
3024 SW Wanamaker Road
Topeka, KS 66614
2. Valley View State Bank
7500 W 95th Street
Overland Park, KS 66212

127 Party in Possession: Moses Huggins, tenant
128 600 SE 45th Street
129 Topeka, KS 66609
130
131 Party of Interest: 1. Meadowlark Square, L.L.C.
132 Case Nos. 01-C-1309 and 03-C-1351
133 Howard T. Paul, Resident Agent
134 PO Box 5318
135 Topeka, KS 66605
136
137 2. State of Kansas
138 Department of Revenue
139 Case Nos. 06-ST-188, 06-ST-347, 06-ST-1730
140 915 SW Harrison
141 Topeka, KS 66625
142
143 3. Jim Clark Leasing, LC
144 Case No. 06-C-361
145 Keith R. Shore, Resident Agent
146 5600 SW 29th Street
147 Topeka, KS 66614
148
149 4. Capital City Bank
150 Case No. 07-C-1065
151 3710 S Topeka Blvd
152 Topeka, KS 66609
153
154 5. Valley View State Bank
155 Case No. 07-C-442
156 Larry G. McLenon, Resident Agent
157 7500 W 95th Street
158 Overland Park, KS 66212
159
160 6. City of Topeka
161 Code Compliance Division
162 620 SE Madison
163 Topeka, KS 66607
164
165 7. Shawnee County Treasurer
166 Tax Warrant No. 2667
167 Shawnee County Courthouse
168 200 SE 7th Street
169 Topeka, KS 66603
170

PROPERTY TO BE ACQUIRED:

Temporary Easement No. T-1:

A portion of the West Half of the Southeast Quarter of Section 19, Township 12 South, Range 16 East of the 6th P.M., in Shawnee County, Kansas, being a portion of that certain tract of land described in deed recorded December 5, 2002 in Book 3739, page 716 in the Official Records of Shawnee County, Kansas described as follows:

Commencing at the Southeast Corner of said West Half of the Southeast Quarter of Section 19; thence on an assumed Azimuth 268 degrees 31 minutes 59 seconds, coincident with the South line of said Southeast Quarter, a distance of 410.66 feet; thence on Azimuth 358 degrees 18 minutes 47 seconds, a distance of 25.00 feet to the Northerly right of way line of S.E. 45th Street and the Point of Beginning; thence continuing on Azimuth 358 degrees 18 minutes 47 seconds, coincident with the proposed east right of way line of S.E. Quincy Street, a distance of 82.50 feet; thence on Azimuth 152 degrees 21 minutes 12 seconds, a distance of 22.84 ; thence on Azimuth 88 degrees 31 minutes 59 seconds, parallel to said South line of said Southeast Quarter, a distance of 60.00 feet; thence on Azimuth 178 degrees 18 minutes 47 seconds, a distance of 62.00 feet to said Northerly right of way line; thence on Azimuth 268 degrees 31 minutes 59 seconds, coincident with said Northerly right of way line, a distance of 70.00 feet to the Point of Beginning.

The above-described property to be acquired contains 4,442 square feet, more or less, and is subject to all rights-of-way, easements, restrictions, and covenants of record, if any.

This easement expires one (1) years after legal possession through condemnation or ninety (90) days after completion of the construction for which this easement is acquired or whichever comes first.

Temporary Easement No. T-2:

A portion of the West Half of the Southeast Quarter of Section 19, Township 12 South, Range 16 East of the 6th P.M., in Shawnee County, Kansas, being a portion of that certain tract of land described in deed recorded December 5, 2002 in Book 3739, Page 716 in the Official Records of Shawnee County, Kansas described as follows:

Commencing at the Southeast Corner of said West Half of the Southeast Quarter of Section 19; thence on an assumed Azimuth 268 degrees 31 minutes 59 seconds, coincident with the South line of said Southeast Quarter, a distance of 410.66 feet; thence on Azimuth 358 degrees 18 minutes 47 seconds, coincident with the proposed east right of way line of S.E. Quincy Street, a distance of

143.60 feet to the Point of Beginning; thence continuing on Azimuth 358 degrees 18 minutes 47 seconds, coincident with said proposed east right of way line, a distance of 481.78 feet; thence on Azimuth 343 degrees 32 minutes 14 seconds, coincident with said proposed east right of way line, a distance of 76.80 feet; thence on a tangent curve to the right, having a radius of 295.00 feet, a central angle of 14 degrees 46 minutes 33 seconds, an arc length of 76.08 feet coincident with said proposed east right of way line; thence on Azimuth 358 degrees 18 minutes 47 seconds, a distance of 3.34 feet to the South line of Horseshoe Bend Subdivision; thence on Azimuth 88 degrees 31 minutes 59 seconds, coincident with said South line, a distance of 10.00 feet; thence on Azimuth 178 degrees 18 minutes 47 seconds, a distance of 3.30 feet; thence on a tangent curve to the left, having a radius of 285.00 feet, a central angle of 14 degrees 46 minutes 33 seconds, an arc length of 73.50 feet; thence on Azimuth 163 degrees 32 minutes 14 seconds, a distance of 78.10 feet; thence on Azimuth 178 degrees 18 minutes 47 seconds, a distance of 476.37 feet; thence on Azimuth 234 degrees 26 minutes 37 seconds, a distance of 12.04 feet to the Point of Beginning.

The above-described property to be acquired contains 6,346 square feet, more or less, and is subject to all rights-of-way, easements, restrictions, and covenants of record, if any.

This easement expires one (1) years after legal possession through condemnation or ninety (90) days after completion of the construction for which this easement is acquired or whichever comes first.

Permanent Right-Of-Way Easement No. P-1:

A portion of the West Half of the Southeast Quarter of Section 19, Township 12 South, Range 16 East of the 6th P.M., in Shawnee County, Kansas, being a portion of that certain tract of land described in deed recorded December 5, 2002 in Book 3739, Page 716 in the Official Records of Shawnee County, Kansas described as follows:

Commencing at the Southeast Corner of said West Half of the Southeast Quarter of Section 19; thence on an assumed Azimuth 268 degrees 31 minutes 59 seconds, coincident with the South line of said Southeast Quarter, a distance of 410.66 feet to the Point of Beginning; thence continuing on Azimuth 268 degrees 31 minutes 59 seconds, coincident with the South line of said Southeast Quarter, a distance of 39.34 feet to the Southwest corner of said tract described in Book 3739, Page 716; thence on Azimuth 358 degrees 18 minutes 47 seconds, coincident with the West line of said tract described in Book 3739, Page 716, also being the East line of Hilltop Subdivision No. 2 and the existing easterly right of way line of S.E. Quincy Street, a distance of 778.11 feet to the South line of Horseshoe Bend Subdivision, also being the North line of said tract described in Book 3739, Page 716; thence on Azimuth 88 degrees 31 minutes 59 seconds,

coincident with said South line, a distance of 10.00 feet; thence on Azimuth 178 degrees 18 minutes 47 seconds, parallel to said West line of said tract described in Book 3739, page 716, a distance of 3.34 feet; thence on a tangent curve to the left having a radius of 295.00 feet, a central angle of 14 degrees 46 minutes 33 seconds, an arc length of 76.08 feet; thence on Azimuth 163 degrees 32 minutes 14 seconds, a distance of 76.80 feet; thence on Azimuth 178 degrees 18 minutes 47 seconds, 39.34 feet east of and parallel with the West line of said tract described in Book 3739, Page 716, a distance of 625.38 feet to the Point of Beginning.

The above-described property to be acquired contains 27,822 square feet, more or less, and is subject to all rights-of-way, easements, restrictions, and covenants of record, if any.

Section 2. That the City Attorney of the City of Topeka, Kansas, on behalf of the Council of the City of Topeka, Kansas shall present a written application to the District Court of Shawnee County, Kansas, for the appointment of appraisers to make the appraisal and assessment required by law when land is taken for public purposes, and said City Attorney shall do all things necessary for the condemnation of said land completing the appropriation of the same for public purposes.

Section 3. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council _____.

William W. Buntten, Mayor

ATTEST:

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 20, 2007

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DATE: October 9, 2007
CONTACT PERSON: Braxton B. Copley, Asst. City Attorney DOCUMENT #:
SECOND PARTY/SUBJECT: PROJECT #:
CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 142 Traffic and Vehicles
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 142-152 concerning amendments to the Standard Traffic Ordinance, and specifically repealing said original code section and City of Topeka Ordinance No. 18806. Final Reading.

(The amendment to STO 107 relates to unattended motor vehicles, allowing exceptions for emergency vehicles; and the amendment to STO 114.1 allows for ATV's to be operated on city streets by law enforcement officers. Approval would codify the ordinance that was adopted previously by the Council and does not change existing law.)

POLICY ISSUE:

Whether City of Topeka should amend City Code to permit exceptions to the Standard Traffic Ordinance to permit the operation of All Terrain Vehicles within the City for law enforcement duties and to permit emergency vehicles and certain vehicles engaged in restoration of utilities to stand unattended.

STAFF RECOMMENDATION:

Approve Ordinance

BACKGROUND:

Recent change in Kansas law allows City's to permit the operation of All Terrain Vehicles on City streets.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

Item #14

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code § 142-152 concerning amendments to the Standard Traffic Ordinance, and specifically repealing said original code section and City of Topeka Ordinance No. 18806.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That City of Topeka Code § 142-152, Amendments, is hereby amended to read as follows:

Amendments.

The current edition of the Standard Traffic Ordinance for Kansas Cities as adopted by reference, shall be amended as follows:

The current edition of the Standard Traffic Ordinance for Kansas Cities as adopted by reference, shall be amended as follows:

(a) Section 1 of the standard traffic ordinance, relating to definitions, is hereby amended as follows:

Other competent evidence includes: (1) Alcohol concentration tests obtained from samples taken two hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing instrument.

(b) Section 13 of the standard traffic ordinance, relating to traffic control signal legend, is hereby declared to be and is omitted and deleted.

(c) Section 33 of the standard traffic ordinance, relating to maximum speed limits, is hereby declared to be and is omitted and deleted.

(d) Section 37 of the standard traffic ordinance, relating to racing on

highways; exhibition of speed, is amended to read as follows:

(1) No person shall drive any vehicle on any road, street, alley, public or private parking lot or highway in the city in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, or test. For purposes of this section, "speed competition or contest" means the operation of one or more motor vehicles to conduct a race or a time trial, including but not limited to, rapid acceleration, exceeding reasonable and prudent speeds for highways and existing traffic conditions, vying for position, or performing one or more lane changes in an attempt to gain advantage over one or more of the other racing participants.

(2) No person shall knowingly engage in a speed exhibition on a highway. For purposes of this section, "speed exhibition" means the operation of a motor vehicle to present a display of speed or power. "Speed exhibition" includes, but is not limited to, squealing the tires of a motor vehicle while it is stationary or in motion, rapid acceleration, rapid swerving or weaving in and out of traffic, producing smoke from tire slippage, or leaving visible tire acceleration marks on the surface of the highway or ground.

(e) Section 50 of the standard traffic ordinance relating to right, left and U-turns at intersection: obedience to, is hereby declared to be and is omitted and deleted.

(f) Section 67 of the standard traffic ordinance, relating to pedestrians to use right half of crosswalks, is hereby declared to be and is omitted and deleted.

(g) Section 104 of the standard traffic ordinance, relating to inattentive driving, is hereby declared to be and is omitted and deleted.

(h) Section 107 of the standard traffic ordinance, relating to unattended motor vehicles, is hereby deleted in its entirety and the following provisions shall be substituted therefore:

(a) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

(b) For the purpose of this section, unattended shall not be construed to mean a motor vehicle with an engine that has been activated by a remote starter system, when the motor vehicle is locked and when the ignition keys are not in the motor vehicle.

(c) This section shall not apply to public or private utility vehicles engaged in the restoration of utility services or to emergency vehicles (as defined by K.S.A. 8-1404 either in use during an emergency or in the performance of law enforcement, firefighting, rescue or medical duties, including those vehicles transporting canines as part of a law enforcement function.

(i) Section 114.1 of the standard traffic ordinance, relating to unlawful operation of All-Terrain Vehicle, is hereby deleted in its entirety and the following provisions shall be substituted therefore:

(a) Except as provided in subsections (b) and (c), it shall be unlawful for any person to operate an all-terrain vehicle:

76 (1) On any interstate highway, federal highway or state highway;

77 or

78 (2) Within the corporate limits of a city of the first class.

79 (b) Notwithstanding the provisions of subsection (a), all-terrain vehicles
80 owned and operated by a county noxious weed department, or all-terrain
81 vehicles owned and operated by persons contracting with a county noxious weed
82 department or the Kansas department of transportation may be allowed to
83 operate such all-terrain vehicles upon the right-of-way of any federal highway or
84 state highway for the purpose of eradicating noxious weeds and such all-terrain
85 vehicles may be operated incidentally upon such federal highway or state
86 highway.

87 (c) Notwithstanding the provisions of subsection (a), all-terrain vehicles
88 may be operated on streets, highways and elsewhere in the city by law
89 enforcement officers performing law enforcement duties.

90 (d) No all-terrain vehicle shall be operated on any public highway,
91 street or road between sunset and sunrise unless equipped with lights as
92 required by law for motorcycles.

93 (e) All-terrain vehicles operated pursuant to subsections (b) and (c)
94 need not be registered pursuant to article 1, chapter 8 of the Kansas Statutes
95 Annotated to operate on the public highways, streets, roads and alleys within the
96 corporate limits of the city.

97 (hi) Section 119 of the standard traffic ordinance, relating to parades and
98 processions, is hereby declared to be and is omitted and deleted.

(~~k~~) Section 194 of the standard traffic ordinance, relating to driving while license canceled, suspended or revoked, is hereby declared to be and is omitted and deleted.

(~~j~~) Section 195.1 of the standard traffic ordinance, relating to operation of a motor vehicle when a habitual violator is hereby declared to be and is omitted and deleted.

(~~k~~) Section 198 of the standard traffic ordinance, relating to vehicle license; illegal tag, is hereby declared to be and is omitted and deleted.

Section 2. That original City of Topeka Code § 142-152 and Ordinance No. 18806 are hereby specifically repealed.

Section 3. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 20, 2007

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DATE: October 9, 2007

CONTACT PERSON: Braxton B. Copley, Asst. City Attorney DOCUMENT #:

SECOND PARTY/SUBJECT: PROJECT #:

CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 142 Traffic and Vehicles

CIP PROJECT: No

ACTION OF COUNCIL: 10/02/07 First Reading. JOURNAL #: 07

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., creating City of Topeka Code Section 142-195 regarding the operation of work-site utility vehicles on the streets within the corporate limits of the City of Topeka. Final Reading.

(The ordinance would permit operation of work site utility vehicles within the corporate limits of the City, provided the vehicle is properly equipped with lights, turn signals and other equipment requirements in K.S.A. Chapter 8, Article 17. The primary reason to authorize such vehicles is to allow City parking enforcement officers to utilize these vehicles in enforcing parking regulations.)

POLICY ISSUE:

Whether or not to adopt ordinance.

STAFF RECOMMENDATION:

BACKGROUND:

Pass and adopt ordinance.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

Item #15

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., creating City of Topeka Code § 142-195 regarding the operation of work-site utility vehicles on the streets within the corporate limits of the City of Topeka.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That City of Topeka Code § 142-195, Reserved, is hereby created by the addition of the following language:

Work-site utility vehicles.

1. Operation of Work-site utility vehicles; Penalty.

(a) Work-site utility vehicles may be operated upon the public highways, streets, roads and alleys within the corporate limits of the city.

(b) "Work-site utility vehicle" means any motor vehicle which is not less than 48 inches in width, has an overall length, including the bumper, of not more than 135 inches, has an unladen weight, including fuel and fluids, of more than 800 pounds and is equipped with four or more low pressure tires, a steering wheel and bench or bucket type seating allowing at least two people to sit side-by-side, and may be equipped with a bed or cargo box for hauling materials.

(c) It shall be unlawful to operate any work-site utility vehicle on any public highway, street, road or alley unless such vehicle shall comply with the equipment requirements under the provisions of article 17, chapter 8 of the Kansas Statutes Annotated. However, work site utility vehicles complying with the provisions of article 17, chapter 8, need not be registered pursuant to article

31 1, chapter 8 of the Kansas Statutes Annotated to operate on the public highways,
32 streets, roads and alleys within the corporate limits of the city.

33 (d) Every person operating a work-site utility vehicle on the public
34 highways, streets, roads and alleys of the city shall be subject to all of the duties
35 applicable to a driver of a vehicle imposed by law.

36 (e) It shall be unlawful for any person to operate a work-site utility
37 vehicle in any manner which violates the provisions in this section. A violation of
38 this section shall be deemed an ordinance traffic infraction.

39 2. Same: Valid Driver's license required; Penalty. It shall be unlawful for any
40 person to operate a work-site utility vehicle on any public highway, street, road or alley
41 within the corporate limits of the city unless such person has a valid driver's license.

42 Section 2. This Ordinance shall take effect and be in force from and after its
43 passage, approval and publication in the official City newspaper.

44 PASSED AND APPROVED by the City Council _____.

45
46
47 CITY OF TOPEKA, KANSAS

48
49
50 _____
51 William W. Bunten, Mayor

52
53 ATTEST:

54
55
56 _____
57 Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 20, 2007

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DATE: October 9, 2007
CONTACT PERSON: Linda Voss
DOCUMENT #:
SECOND PARTY/SUBJECT: Traffic Signal Installation
PROJECT #: 14127
CATEGORY/SUBCATEGORY: 014 Ordinances – Non-Codified / 004 Public Improvements
CIP PROJECT: Yes
ACTION OF COUNCIL: 10/02/07 First Reading
JOURNAL #: 07
PAGE #:

DOCUMENT DESCRIPTION:

A PROJECT BUDGET in the amount of \$180,000 and **AN ORDINANCE** introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 14127, which provides for replacing traffic signal at Washburn Avenue and 17th Street, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka. Final Reading. (*Council District Nos. 3 and 6*)

(Approval provides for the replacement of the existing traffic signal, as well as, minor sidewalk and ramp work at SW Washburn Avenue and SW 17th Street. Approximately \$150,000 of the construction and inspection costs will be funded by Federal Aid Safety funds and the remaining \$30,000 would be funded by General Obligation Bonds.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Adopt the Project Budget and Ordinance as presented.

BACKGROUND:

It is unknown when this traffic signal was installed - it was upgraded in 1980. It is being replaced so that the left turn phasing may be changed to protective only phasing due to the number of crashes and also due to its age. Federal aid safety funds will cover 90% of the construction and inspection up to \$150,000.00.

BUDGETARY IMPACT:

\$30,000.00

SOURCE OF FUNDING:

General Obligation Bonds or any other lawfully available funds (2008 CIP - Signal Replacement Funds): \$ 30,000.00

Federal-Aid Funds: \$150,000.00

Total Debt Service Cost for this project, spread over 20 years will be \$49,171.00

Item #16

ATTACHMENTS:

[Project Budget](#)

[Debt Service](#)

[Vicinity Map](#)

[Ordinance](#)

PROJECT BUDGET

Project No. 14127

Traffic Signal Replacement Project

LOCATION:

SW Washburn Avenue at SW 17th Street

DESCRIPTION OF PROJECT:

Replace existing traffic signal, minor sidewalk and ramp work.

SOURCE OF FUNDS:

CIP 2008 - General Obligation Bonds (Signal Replacement Funds)
Federal-aid funds to cover 90% of the construction and inspection up to \$150,000

COST ESTIMATE:

	<u>City of Topeka</u>	<u>Federal-Aid</u>	<u>Total</u>
Construction:	\$16,000.00	\$144,000.00	\$160,000.00
Design:	\$4,800.00	\$0.00	\$4,800.00
Construction Service Fees:			
<i>Construction Inspection</i>	\$2,000.00	\$6,000.00	\$8,000.00
<i>Construction Staking</i>	\$500.00	\$0.00	\$500.00
Administrative Fees:			
<i>Legal Dept. Admin.</i>	\$0.00	\$0.00	\$0.00
<i>Engineering Admin.</i>	\$500.00	\$0.00	\$500.00
Right-of Way Acquisition:	\$0.00	\$0.00	\$0.00
Contingency Amount:	\$4,771.00	\$0.00	\$4,771.00
Temporary Notes:	\$1,429.00	\$0.00	\$1,429.00
Total:	\$30,000.00	\$150,000.00	\$180,000.00

PUBLIC HEARING:

PROJECT AUTHORITY:

- a. Statutes: _____
- b. Ord./Res. No.: _____
- c. Improvement District: _____
- d. City at Large: _____
- e. Method of Assessment: _____

Date: _____

PROJECT ENGINEER:

Linda Voss _____

GO Bond Cost of Project

PROJECT: 14127, SW 17th and SW Washburn

Interest rate	5.25%
Number of Years	20

Cost of Issuance	0.00%
Temp Note interest	5.000%

Principal (project cost)	<u>\$28,571</u>
Plus Temp Note Interest (unless included in Principal)	<u>\$1,429</u>
Subtotal	\$30,000
Plus Cost of Issuance	<u>\$0</u>
Total	\$30,000

Annual Debt Service	\$2,459
Annual Debt Service as Percent of Total	8.2%

Total Debt Service (principal and interest)	\$49,171
---	----------

Difference Project Cost and Total Debt Service	\$20,600
--	----------

GO Bonded Indebtedness as of January 2007	\$165,635,000
2006 Temporary Notes that Finance Future GO Bond projects	\$11,470,000
Approved, not Included in GO Bond Issue or Temporary Notes--City Projects	\$7,356,441
Approved, not Included in GO Bond Issue or Temporary Notes--Special Assessment Projects	<u>\$1,299,237</u>
Total Indebtedness	<u>\$185,760,678</u>
Plus Project	\$185,790,678

SW 17th St and SW Washburn AVE



Map Produced On:
September 4, 2007
Map Revised On:

Map Printed On:
September 4, 2007

Map Produced By:
David Fish
Engineering Tech II
(785)368-3052
dfish@topeka.org



NOT TO SCALE



City of Topeka GIS

Division of Public Works * Technical Support Group
620 SE Madison Street * Topeka, Kansas 66607
Ph. 785-368-1905 F. 785-368-1902 www.topeka.org

City of Topeka, Kansas GIS Data Disclaimer

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(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 14127, which provides for replacing traffic signal at Washburn Avenue and 17th Street, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That it is hereby deemed advisable and necessary and is also hereby authorized, pursuant to Section A12-1 of the Code of the City of Topeka that the following public improvement be made:

A. GENERAL NATURE OF IMPROVEMENT:

This project will provide for replacing existing traffic signal, minor sidewalk and ramp work at SW Washburn Avenue and SW 17th Street.

B. TOTAL PROJECT BUDGET COST:

\$180,000.00

C. SOURCE OF FUNDS:

General Obligation Bonds or any other lawfully available funds	\$30,000.00
---	-------------

Federal-Aid Funds	<u>\$150,000.00</u>
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TOTAL	\$180,000.00
-------	--------------

Section 2. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

37 PASSED and APPROVED by the City Council_____.

38 CITY OF TOPEKA, KANSAS

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40

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William W. Bunten, Mayor

42 ATTEST:

43

44

45

46 _____
Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 18, 2007

+ Back Print

DATE: October 9, 2007
CONTACT PERSON: Bill Fiander/David Thurbon DOCUMENT #:
SECOND PARTY/SUBJECT: Board of Shawnee County Commissioners PROJECT #: CU07/6
CATEGORY/SUBCATEGORY 020 Resolutions / 001 Special Permits
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., in accordance with Section 48-21.02(c)(3) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a correctional placement residence or facility general on property currently zoned "I-2" Heavy Industrial District and located at 818 SE Adams Street in the City of Topeka, Kansas. (CU07/6) (Council District No. 1) (Planning Commission recommended approval.) (Planning Department recommended approval.)

(Approval would allow use of the site for a correctional placement residence or facility general by Shawnee County Department of Corrections.)

POLICY ISSUE:

Request is consistent with the land use principles of the Comprehensive Plan.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be conditionally **APPROVED** by a vote of **6-0-0** at their September 17, 2007 meeting as referenced in their attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report dated September 17, 2007.

BACKGROUND:

- See Staff Report.
- City Council options:
 - **Adopt** the recommendation of the Planning Commission by Resolution;
 - **Override** the Planning Commission's recommendation by a two-thirds majority (6 votes) of the City Council membership; or,
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

Item #17

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Resolution](#)

[Staff Report](#)

[Aerial](#)

[Zoning Map](#)

[Application \(4 pages\)](#)

[Planning Commission Minutes](#)

RESOLUTION _____

CONDITIONAL USE PERMIT

A RESOLUTION

introduced by City Manager Norton N. Bonaparte, Jr. in accordance with Section 48-21.02(c)(3) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a correctional placement residence or facility general on property currently zoned "I-2" Heavy Industrial District and located at 818 SE Adams Street in the City of Topeka, Kansas. **(CU07/6) (Council District No. 1)**

BE IT RESOLVED by the Council of the City of Topeka, Kansas, that the application of City of Topeka under the provisions of Section 48-21.02(c)(3) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a correctional placement residence or facility general on property currently zoned "I-2" Heavy Industrial District and located at 818 SE Adams Street in the City of Topeka, Kansas, and legally described as follows:

Lots 217, 219, 221, 223 and 225 on 8th Avenue east and the west ½ of vacated Charles Street lying east of and adjacent to said Lot 225, all in Holliday's Addition to the City of Topeka, Shawnee County, Kansas.

Beginning at the intersection of the southerly line of East 8th Avenue with the centerline of vacated Charles Street, as said Street and Avenue are shown on a recorded plat of C.K. Holliday's Addition to the City of Topeka, in Shawnee County, Kansas; thence south 71 degrees 16 minutes 22 seconds east (bearing assumed for the purpose of this description) along said southerly street line, 56.18 feet; thence south 20 degrees 03 minutes 44 seconds west, 140.05 feet to a point in a line that is parallel with and distant northerly 10 feet, measured at right angles, from the northerly of Lot 265 of said Addition; thence north 71 degrees 15 minutes 35 seconds west along said parallel line and its westerly prolongation, 52.77 feet to a point in said centerline of vacated Charles Street; thence north 18 degrees 40 minutes east along said centerline 140.00 feet to the point of beginning.

Lots 266, 268, 270, 272, 274, 276, 278, 280, 282 and 284 on Adams Street, in Holliday's Addition to the City of Topeka, Shawnee County, Kansas.

A parcel of land in the SW ¼ of Section 32, Township 11 South, Range 16 east of the 6th P.M., in the City of Topeka, in Shawnee County, Kansas, described as follows:

Beginning at the intersection of the westerly prolongation of the southerly line of Lot 283 of C.K. Holliday's Addition to said city as said lot is shown on a recorded plat of said addition, with the centerline of vacated Charles Street, as said street is also shown on said recorded plat; thence north 18 degrees 40 minutes east (Bearing assumed for the purpose of this legal description) along said centerline of vacated Charles Street, 260.0 feet to a point in a line that is parallel with and distant northerly 10.00 feet, measured at right angles, from the northerly line of Lot 265 of said addition; thence south 71 degrees 15 minutes 35 seconds east along said parallel line, 52.77 feet; thence south 20 degrees 03 minutes 44 seconds west a distance of 260.07 feet to a point in the southerly line of said Lot 283; thence north 71 degrees 15 minutes 30 seconds west along said southerly lot line 46.44 feet to the point of beginning, except minerals as reserved in Deed recorded in Book 2610, Page 29.

be, and the same is hereby approved, **subject to:**

- 1. Use and development of the site in accordance with the site development plan and landscape plan approved by the Planning Commission.**
- 2. Compliance with the Shawnee county Jail Expansion Project 2007 "Statement of Operation".**

ADOPTED AND APPROVED by the Council of the City of Topeka, _____, 2007.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

September 17, 2007
Agenda Item #G-3

CONDITIONAL USE PERMIT REPORT

TOPEKA PLANNING DEPARTMENT

CASE NO: CU07/6

by: Board of Shawnee County Commissioners

PROPOSAL: Requesting a Conditional Use Permit "CUP" to establish a *Correctional placement residence or facility general*, on property currently zoned "I-2" Heavy Industrial District.

LOCATION: 818 SE Adams Street.

PARCEL ID NUMBER: 1093203025004000.

PRESENT USE: An 81,549 square foot lot that is presently occupied by two buildings. The largest of which is an approximate 40,800 square foot structure which is the subject of this conditional use permit request. This structure was originally occupied by the Mainline Printing Company but is now vacant.

PROPOSED USE: In accordance with Section 48-21.02(c)(3) of the Comprehensive Zoning Regulations, the applicant seeks a Conditional Use Permit to operate a *Correctional placement residence or facility general*, on the site.

CHARACTER OF NEIGHBORHOOD: The neighborhood is a mix of light and heavy industrial uses.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

ZONING CLASSIFICATION		PRESENT LAND USE
North:	"I-2" Heavy Industrial District	Capital City Iron Works
South:	"I-2" Heavy Industrial District	Paper Stock Dealers, Inc.
East:	"I-2" Heavy Industrial District	AT&SF Railroad.
West:	"I-1" Light Industrial District	Shawnee County Jail Facility

GUIDELINES FOR EVALUATION: In considering an application for a conditional use permit, the Planning Commission and governing body will give consideration to the following criteria in order to protect the integrity and character of the zoning district in which the proposed use is located; and to minimize adverse effects on surrounding properties and neighborhood, all conditional use permit

September 17, 2007
Agenda Item #G-3

applications shall be evaluated in accordance with the guidelines established in Section 48-25 of the City of Topeka, Comprehensive Zoning Regulations.

1. **The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies:** The *Comprehensive Plan* designates this area as *Industrial* land use. The site's present classification is consistent with the established pattern of zoning and land use in this area. As a facility that is to house minimum security offenders, the proposed *Correctional placement residence or facility general* is considered to be consistent with the heavy industrial land use designation of this area.
2. **The character of the neighborhood including but not limited to: land use, zoning, density, architectural style, building materials, height, structural mass, sitting, open space and floor-to-area ratio:** The proposal calls for the renovation of the existing 40,800 square foot structure into a minimum security/custody work release facility having a maximum inmate population for the site of 240 inmates. The sole addition to the existing building footprint will be a small 500 square foot vestibule proposed for the west elevation of the existing building to serve as an entry point to the facility. The structure as proposed is comparable with existing structures which comprises this area. Sufficient parking will be provided through a 28 space on site parking lot and by providing 24 cutback parking spaces along SE Adams.
3. **The zoning and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses:** The zoning and uses of nearby properties are viewed as being in harmony with the use as proposed since the inmate population of the proposed *Correctional placement facility general* will be very similar to that which is currently being housed in the County Jail across the street from the proposed facility. The proposed facility is to accommodate a maximum of 240 inmates with current plans anticipating the housing of 42 females and 192 males with 1/3 being work release, 1/3 jail trustees, and 1/3 minimum security offenders sentenced by the City of Topeka. A maximum of 6 correctional specialists/officers per shift are anticipated to operate the facility. The facility is to be operated 24/7, 365 days per year. The proposed use is seen as compatible with the current zoning and uses of nearby properties based on the similar nature of the proposed use and that of the existing jail facility located across the street.
4. **The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations:** The site's present classification is consistent with the established pattern of zoning and land use in the area and is therefore viewed as being suitable for the uses to which it has been restricted.
5. **The length of time the property has remained vacant as zoned:** Until recently the property was occupied by the Mainline Printing Company printing plant which had been in operation on the site for many years.
6. **The extent to which the approval of the application would detrimentally affect nearby properties:** As the Shawnee County Jail facility has occupied the site immediately to the west of the subject property across SE Adams Street, the proposed *Correctional placement residence or*

September 17, 2007
Agenda Item #G-3

facility general is not anticipated to detrimentally affect any nearby properties to any greater extent than the existing jail.

7. **The extent to which the proposed use would substantially harm the value of nearby properties:** Staff is unaware of any substantial harm the proposed use would have on the value of any surrounding properties.
8. **The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property:** No adverse affects are anticipated. Sufficient parking is to be provided to accommodate the existing and proposed use on site and by means of constructing 24 cutback parking spaces along SE Adams Street by the applicant.
9. **The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution or other environmental harm:** None anticipated.
10. **The economic impact of the proposed use on the community:** No detrimental economic impact to the community is anticipated.
11. **The gain, if any, to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application:** There appears to be no particular public gain in respect to health, safety and welfare by denying the requested application. The project's close proximity to the existing jail allows the County to recognize efficiencies in the continued operation of both facilities. This project preserves the higher security space in the existing correctional facility and will help lower costs and provide additional minimum security level work release and trustee work crew spaces for the County and City judges to use as sentencing alternatives.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS:

Application: **Complete**

Minimum Lot Area: **Compliant.**

Setbacks: **Compliant.**

Platting: **Compliant** – Lot 217 and more, Holliday's Addition to the City of Topeka, Shawnee County, Kansas.

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request has been submitted to all applicable reviewing agency staff for consideration and comment. No significant issues or concerns were expressed by reviewing staff relative to code compliance or the provisions of public services.

September 17, 2007
Agenda Item #G-3

ADDITIONAL FACTORS:

1. Neighborhood Improvement Association: Not Applicable.
 2. Capitol Plaza Area: Not Applicable.
 3. Flood Hazard Area: Not Applicable.
 4. Airport Hazard Area: Not Applicable.
 5. Historic Properties: No Registered Properties within 500-feet.
-

STAFF RECOMMENDATION:

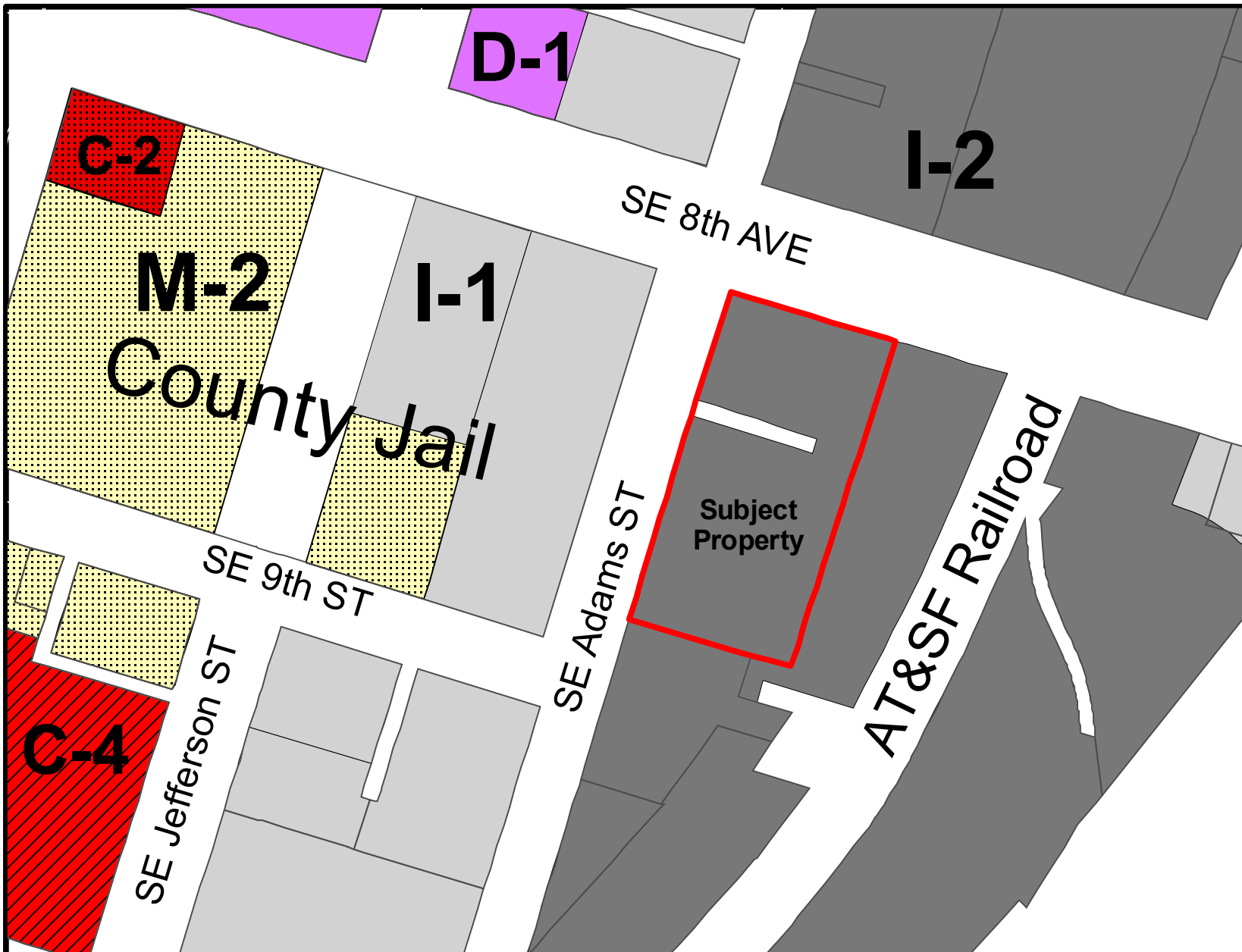
Based upon the above findings and analysis Planning Staff recommends **APPROVAL** of this proposal, subject to the following conditions:

1. Use and development of the site in accordance with the site development plan and landscape plan approved by the Planning Commission.
2. Compliance with the Shawnee County Jail Expansion Project 2007 "Statement of Operation".

Prepared by: Dean W. Diediker
Planner II



CU07/6 by Board of Shawnee County Commissioners



CU07/6 by Board of Shawnee County Commissioners



Application Form Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): The Board of County Commissioners of the County of Shawnee, Kansas

Street Address: 818 SE Adams Street

City: Topeka State: KS Zip: 66603 E-mail: shawn.leisinger@snco.us

Business phone: (785) 233-8200 ext. 4042 Home phone: N/A Fax: (785) 291-4902

Authorized Owner Representative (if any): Shawn Leisinger, Assistant Shawnee County Counselor-Attorney

Street Address: 200 SE 7th Street, Suite 100

City: Topeka State: KS Zip: 66603 E-mail: shawn.leisinger@snco.us

Business phone: (785) 233-8200 ext. 4042 Home phone: N/A Fax: (785) 291-4902

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

Additional contact - Richard Davis, Director of Facilities Management

Street Address: 200 SE 7th Street, Suite B28

City: Topeka State: KS Zip: 66603 E-mail: rich.davis@snco.us

Business phone: (785) 233-8200 ext. 4435 Home phone: N/A Fax: (785) 291-4901

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: Theodore D. Ensley, Chair of Shawnee County Commission

Owner 1 Signature: Theodore D Ensley Date: 8/21/07

Owner 2: _____

Owner 2 Signature: _____ Date: _____

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): 818 SE Adams Street,
Topeka, Kansas

Legal Description of Property: lot(s) _____ block _____ subdivision _____
(if unplatted, attach metes and bounds description) -numerous lots in Holliday's Addition to the City of Topeka, see attached deed (Exhibit A).

Total Area (acres/square feet): 81,549 sq. ft.

Type of Application:

1. Re-zoning from: _____ to: _____
2. Conditional Use Permit proposed use: Shawnee County Corrections Jail Expansion Project

Existing Use (# of dwelling units, square feet, etc.): Manufacturing/Printing facility for Mainline Printing since 1975 in regards to building at issue.

How long has the existing use been on the property? _____

Proposed Use (# of dwelling units, square feet, etc.): Correctional Facility Expansion for Work Release Program Center - Minimum Custody Facility.

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? yes If Yes, when? 7/2/2007

FOR OFFICE USE ONLY

Date submitted: <u>8/3/07</u>	Date notice sent: <u>8/24/07</u>
Application no.: <u>Cu07/16</u>	Date advertised: <u>8/24/07</u>
Filing fee: <u>700⁰⁰</u> Receipt no.: <u>11609</u>	Date of hearing: <u>9/17/07</u>
Quarter section map no.: _____	Council district: <u>#1</u>

CHECK YES OR NO

Capital Plaza Area: Yes _____ No _____	Within Historic Site Environs: Yes _____ No _____
	If Yes, what is it?: _____
100 yr Floodplain: Yes _____ No _____	National/State Historic Register: Yes _____ No _____
Airport Hazard Area: Yes _____ No _____	Local Historic Resource: Yes _____ No _____
	Neighborhood Association: Yes _____ No ☒ _____
	Name of N.I.A./N.A.: _____

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. Why is the land not suitable for the uses to which the property is currently zoned?

The proposed use is permitted under the current zoning of the parcel as I-2. The former occupant, Mainline Printing, relocated within Topeka to a location with more space. The parcel is directly adjacent to the Shawnee County Correctional Facility and is the most logical and appropriate location to expand correctional activities. The location is extremely desirable for work release and minimum security/custody inmate housing.

2. What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?

The approval of the proposed conditional use permit would allow for expanded corrections activities directly adjacent to the existing correctional facility. The area is industrial and the existing correctional facility has been located in the area for decades. No real change to the neighborhood would occur.

3. How does this request relate to any adopted neighborhood/land use plans by the City?

Unknown whether there are any pending plans by the City for this area. The long term, high level I-2 industrial use is unlikely to change any time in the near future. Location of a correctional facility expansion at this site, as opposed to another site in Topeka, seems to be the best land use plan.

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

- a. Location and size of water main serving site:
No changes to existing City service required as noted on proposed site plan per direction of City staff. (See Exhibit B.)
- b. Does the current system have adequate capacity? If not, are improvements anticipated?
- c. If other than City of Topeka, identify water district provider: _____

2. Sanitary Sewer

- a. Location and size of sewer main serving site:
No changes to existing City service required as noted on proposed site plan per direction of City staff.
- b. Does the current system have adequate capacity? If not, are improvements anticipated?
- c. If other than City of Topeka, identify sewer district provider: _____

3. Storm Drainage

- a. How will storm water run-off be handled on site?
Green space will handle more run-off for water into the ground in comparison to the existing, impervious gravel parking areas.
- b. Does the current storm sewer system have adequate capacity for proposed use?
Yes - at north end of property existing storm water system in place that may be utilized for any paved surface run-off.

4. Traffic Circulation

- a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?
The site fronts on both Adams Street and 8th Street. The City has plans and funding to resurface Adams Street and the County will provide cut-back parking to enhance the current traffic flow and street condition.
- b. What are the site's existing or proposed access points?
Current access points will continue but will be minimally altered to improve traffic flow.
- c. Will any street improvements or traffic control improvements be required?
The County will submit the required agreements with the City to provide proposed cut-back parking at County expense. This will be completed before the City completes the planned and budgeted street resurfacing. The proposed crosswalk will be completed and marked at County expense.

DRAFT

Minutes of the Topeka Planning Commission September 17, 2007

CU07/6 by the Board of Shawnee County Commissioners requesting a Conditional Use Permit to allow for correctional placement residence or facility general on property currently zoned "I-2" Heavy Industrial District and located at 818 SE Adams Street. **(Diediker)** Dean Diediker summarized the staff report.

Proponents:

Shawn Leisinger, Assistant County Counselor, spoke in favor of the proposal. He said this is a good location for this use. The people in this program will be low risk and will open more room for the higher risk inmates in the jail itself. He said it is conveniently located next to the jail to bring supplies back and forth easily. We plan to landscape, improve the street and parking. The surrounding properties are compatible with this use. This program will benefit the city and county. About 1/3 of the people will be city minimal offenders that are sentenced to the program by the city judge. There is going to be a need for housing in the future for inmates. The work release program will help filter out the lower risk inmates from the higher risk. We have worked with staff to come up with this plan. There are several staff members in the audience for questions as well. Mark Boyd asked if there are any hazards or concerns with people living in an industrial area? Mr. Leisinger said he doesn't think there will be any hazards. He said the only issues on the property have been traffic cutting through or using it for parking. The surrounding businesses are used to the jail being there. We haven't heard any complaints or concerns in the area with the jail or this proposal. Mr. Boyd asked how visitors will be handled? Mr. Leisinger said there will be minimal visitation. Most of the inmates in this facility are people that work in the community during the day and stay at the facility in the evening. He added there will be 4 to 6 officers on this property with additional backup at the jail. He said these are folks that have earned this privilege and they don't want to lose it. Mr. Blackmon asked if the county is going to fix the street? Mr. Leisinger replied we are going to help. The city is resurfacing the street and we are going to add to it with landscaping, curbing and gutters.

No one spoke in opposition to the proposal.

Exparte communications - none

Howard Blackmon moved approval as written by staff, seconded by Jim Brown. **APPROVAL, subject to conditions listed in the staff report. (6-0-0)**



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 25, 2007

 + Back  Print

DATE: October 9, 2007
CONTACT PERSON: Jim Langford/kej
SECOND PARTY/SUBJECT: Weekly Expenditures
CATEGORY/SUBCATEGORY: 014 Ordinances – Non-Codified / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL:
DOCUMENT #:
PROJECT #:
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period September 17, 2007, through September 23, 2007, and enumerating said expenditures therein. First and Final Reading.

POLICY ISSUE:

Approve and allow weekly payments of valid operating expenditures, pursuant to Resolution No. 7607.

STAFF RECOMMENDATION:

Adopt as presented.

BACKGROUND:

Pursuant to Resolution No. 7607, adopted on April 12, 2005, which provides authorization to pay for certain expenditures prior to approval by the Council in an expenditure ordinance, the expenditures being authorized by this ordinance have been previously paid, in accordance with established procedures and policies for such payments.

BUDGETARY IMPACT:

Approves expenditures for the period September 17, 2007, through September 23, 2007, in the amount of \$412,562.62.

SOURCE OF FUNDING:

Appropriated funds and fees-for-service revenues of various City departments.

ATTACHMENTS:

[Weekly Expenditures for Week Ending September 23, 2007](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte Jr., allowing and approving City expenditures for the period of September 17, 2007, through September 23, 2007, and enumerating said expenditures herein.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. All expenditures made or authorized to be made by issuance of checks or electronic transfers as enumerated herein, are in accordance with City of Topeka Resolution No. 7607.

Section 2. The claims and expenditures listed in Exhibit A, which is on file in the City Council Office and the City Clerk's Office and incorporated herein by said reference, are hereby allowed and approved for payment.

<u>Section 3.</u>	Total for 82 vendor checks written in this period	\$179,054.67
	Total vendor checks voided in this period (net)	(0.00)
	Total electronic transfers to vendors in this period	233,012.47
	Total net payroll to employees this period	495.48
	Total payroll related electronic transfers this period	<u>00.00</u>
	Total for expenditures in this period	<u>\$412,562.62</u>

Section 4. This ordinance shall take effect and be in force after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council _____.

ATTEST:

William W. Bunten, Mayor

Brenda Younger, City Clerk



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www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 20, 2007

+ Back Print

DATE: October 9, 2007

CONTACT PERSON: Bill Fiander/David Thurbon **DOCUMENT #:**

SECOND PARTY/SUBJECT: Michael J. and Bonnie M. **PROJECT #:** Z07/17
Gish

CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 007 Zoning

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 1507, 1515 and 1517 East 6th Avenue from “X-1” Mixed Use District TO “C-4” Commercial District. Final Reading. (Z07/17) (Council District No. 3)(Planning Commission recommended approval by a vote of 5-1-0.) (Planning Department recommended disapproval.)

(Approval authorizes the existing vehicle repair business to conform to the current zoning district.)

POLICY ISSUE:

Request is not consistent with the East Topeka Neighborhood Revitalization Plan which recommends an improved mixed-use image for the SE 6th Avenue corridor while allowing small businesses the flexibility to expand.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of **5-1-0** at their September 17, 2007 meeting as referenced in their attached minutes. The Planning Department recommended that this request be **DISAPPROVED** as referenced in the attached staff report.

BACKGROUND:

- See Staff Report.
- City Council options:
 - **Adopt** the recommendation of the Planning Commission by Ordinance;
 - **Override** the Planning Commission’s recommendation by a two-thirds majority (6 votes) of the City Council membership; or,
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council’s failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

Item #19

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

[staff report](#)

[Zoning Map](#)

[Aerial](#)

[Planning Commission Minutes](#)

[Planning Commission Minutes](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 1507, 1515 and 1517 East 6th Avenue from "X-1" Mixed Use District **TO** "C-4" Commercial District. **(Z07/17)**
(Council District No. 3)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by classifying the following described property:

1507 SE 6th Avenue

6th Avenue east Lots 419-421-423 and 425 in Parkdale Addition a portion of Lot 425 being in Roots Addition also Lot 427 and the west ½ of Lot 429 in Roots Addition Subdivision to the City of Topeka, Shawnee County, Kansas.

1515 SE 6th Avenue

6th Avenue the east ½ of Lot 429, the west ½ of Lot 431 in Roots Addition Subdivision to the City of Topeka, Shawnee County, Kansas.

1517 SE 6th Avenue

6th Avenue the east ½ of Lot 431, all of Lot 433 and the west ½ of Lot 435 in Roots Addition to the City of Topeka, Shawnee County, Kansas.

from "X-1" Mixed Use District **TO** "C-4" Commercial District.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka, _____, 2007.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X

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ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: Z07/17

by: Michael J. and Bonnie M. Gish

PROPOSAL: Amend the District Zoning Classification from "X-1" Mixed Use District TO "C-4" Commercial District.

LOCATION: 1507 SE 6th Avenue, 1515 SE 6th Avenue, and 1517 SE 6th Avenue.

PARCEL ID NUMBER: 1093204033004000, 1093204033003000, and 1093204033002000

PRESENT USE: The properties at 1507 SE 6th Avenue, 1515 SE 6th Avenue, and 1517 SE 6th Avenue. comprise approximately 0.61 acres (26,572 sq. ft.) and are occupied by a car repair shop, a building for personal storage, and a grocery/variety store, respectively. The 2,880 sq. ft. car repair shop was built in 1979 and is presently considered a legal non-conforming use. The 702 sq. ft. building used for personal storage was built in 1860 and is considered to be non-conforming. The 3,312 sq. ft. grocery/variety store was built in 1961 and is considered conforming.

PROPOSED USE: No new uses are proposed.

CHARACTER OF NEIGHBORHOOD: The area is primarily made up of single-family residential dwellings on the interior of the neighborhood with business establishments mixed with single-family homes along the SE 6th Avenue corridor. The corridor area is classified as "intensive care" according to the City's Neighborhood Health ratings.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	"X-1" Mixed Use District	Single-family homes
South:	"R-2" Single-Family Dwelling District	Single-family homes
East:	"X-1" Mixed Use District	Single-family home
West:	"X-1" Mixed Use District	Vacant land/Church

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: These three properties were re-zoned from "C-4" Commercial to "X-1" Mixed Use in July of 2002 as part of a comprehensive re-zoning proposal by

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the City of Topeka to implement the land use recommendations of the East Topeka Neighborhood Revitalization Plan. The total rezoning covered a 1-mile stretch of SE 6th Avenue involving 104 parcels.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: Given the goals of the East Topeka Neighborhood Revitalization Plan, the 6th Avenue corridor is better suited for “X-1” Mixed Use than “C-4” Commercial. The land use goal of the plan is to **“preserve the viability of the single-family residential blocks from higher intensity and/or incompatible land uses.”** The “X-1” district promotes design standards tailored to fit in with the existing traditional urban/mixed-use character of 6th Avenue (0’ setbacks, minimized off-street parking, screening of storage, neighborhood-scale signage, multiple uses on a lot, etc.), limit heavy commercial uses, and thus protect the character of the single-family blocks from unnecessary encroachment of noise, traffic, and visual impacts. This zoning also allows greater adherence to four guiding principles of the plan:

- Fortify mixed-use development along 6th Street corridor and improve its image.
- Locate commercial development nodes on perimeter of sub-areas near heavy traffic thoroughfares; allow for “mom and pop” stores within the interior of sub-areas.
- Establish gateways, corridors, and edges that reflect a positive first impression of East Topeka.
- Support local entrepreneurship within the context of the plan

By all accounts, the current zoning is better suited to improve the image of the corridor (e.g., signs) and allow appropriately-scaled “mom and pop” stores to harmoniously intermingle with residential uses. Uses such as billboards, car lots, car repair, bars, and outdoor storage/display would be prohibited or allowed only with a Conditional Use Permit ensuring staff and the neighborhoods the ability to review their impact on a case by case basis. On the other hand, the proposed “C-4” zoning does not have design standards, does not permit ground floor residential uses, allows the above uses by right, and is not flexible with regard to setbacks or parking. The “C-4” district is intended for commercial services at a community or regional level. As detailed in the previous staff report presented to the Planning Commission on June 24, 2002 (see attachment), a market study found the area to be over-zoned for commercial and recommended concentrating retail/service areas. The re-zoning to implement the Plan preserved several concentrations of “C-4” where traffic intensity was greater thus implementing the “nodal” principle and minimizing future “strip” characteristics along SE 6th Avenue.

Two of the subject properties show greater compliance with “X-1” standards than “C-4” standards as is detailed in the comparison tables found in this report. The use of the third property (car repair shop) could still be made more conforming through a Conditional Use Permit process.

CONFORMANCE TO COMPREHENSIVE PLAN: As noted above, the proposal would not be consistent with the goals of the East Topeka Neighborhood Revitalization Plan. The Plan also designates the 6th Avenue corridor for *Mixed Use – Neighborhood* which promotes the integration of neighborhood commercial uses with medium density residential uses along minor/major arterials such as this. The Plan recommends that since the properties front a major image street, quality design should be emphasized by not letting parking lots dominate street frontages, restricting large pole signage, making them pedestrian friendly, etc. The Plan also states, “*Current C-4 commercial zoning allows high intensity uses that renders 6th Street to a life of strip commercial and visual clutter if left unchecked.*” Clearly, the proposal to C-4 would not be consistent with these statements. It also would not be consistent with the *Land Use*

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and *Growth Management Plan* that designates this area as *Mixed Use* and also discourages heavy commercial uses stripping out the community's arterials.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: Removal of the present restrictions would open the door for other C-4 re-zonings to occur along SE 6th Avenue. This would have the effect of allowing heavy commercial uses that are in conflict with the image goals of the neighborhood plan and making homeownership investment less viable in the future. The subject property itself is surrounded by residential properties making it highly likely that it will have a negative impact on those properties. The "X" district can accommodate a more compatible mixed use environment because that is the way it was designed. It was designed to accommodate neighborhood commercial uses found in "C-2" Commercial district. Heavy car repair shops, such as the one at 1507 SE 6th, would require a CUP in the "C-2" District just like the "X-1" District. The "C-4" District was designed to be closer to industrial uses, areas with the highest traffic counts, and large-scale uses that required larger footprints. It was not designed to be in residential neighborhoods without some mitigation of those impacts since it accommodates the most intense commercial uses.

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: As outlined above, approval of this classification does not support or implement the policies set forth in the neighborhood plan or the *Land Use and Growth Management Plan* and therefore would have a far-reaching impact on public policy for East Topeka as a precedent-setting case. If approved, further re-zonings to C-4 would be expected to be supported on a piecemeal basis and completely undermine the integrity and comprehensive nature of the remaining "X-1" zoning along the corridor. The "X" District is intended to be applied on an area-wide basis so that all properties can expect to be treated fairly with the same consistent standards. These areas are different because commercial and residential uses intermingle and therefore need a similar set of rules to live by harmoniously. The public also benefits from promoting residential and commercial mixed uses to reduce traffic trips, encourage a walkable neighborhood, and increase natural surveillance.

The uses on the subject property are not necessarily made conforming under "C-4" and in fact are largely made more conforming under the "X-1" District (see table for comparison). In addition, it was anticipated car repair businesses could be designed to be more aesthetically pleasing and still meet the plan's performance standards; this is why those types of new uses can apply for a CUP. The subject car repair shop in this case has been grandfathered in the "X-1" District and enjoys a great deal of protection under the regulations. The legal non-conforming use would be allowed to expand without a CUP if they meet the performance standards set forth for the "X" Districts. This can be done administratively and the Planning Director has the ability to waive any of those standards if they are not reasonable to the nature of the development (e.g., an existing paved front setback area would not be required to be ripped-up for landscaping). The owner also has the ability to develop multiple-family residential uses in the "X-1" district which is not permitted in the "C-4" District.

In summary, the gain to the public health, safety, and welfare by maintaining restrictions that implement the community-wide goals of the neighborhood plan are balanced by allowing the property owner greater flexibility to develop mixed uses in a manner they would not otherwise be able to do. Those more intense

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commercial uses that are more restricted with the current zoning are offset by allowing them the ability to expand administratively or apply for a Conditional Use Permit to establish the parameters of future expansion.

AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area and will not be overburdened by this proposal. There are currently no transportation projects in the City's CIP (2006-2011) affecting this area.

COMPLIANCE WITH ZONING REGULATIONS:

The following is a comparison of the X-1 and C-4 zoning districts based upon the current uses on each property:

1507 SE 6th Ave

		X-1	C-4
Existing use	Automobile service station, Type III	Non-conforming (allowed as CUP)	Conforming
Front setback	Approximately 60' (6 th Ave) Approximately 40' (Locust St)	Conforming (0'-15')	Conforming (25')
Rear setback	Approximately 0'	Conforming (0'-25')	Non-conforming (25')
Side setbacks	Approximately 11'	Conforming (0'-8')	Conforming (10')
Lot size	16,988 square feet	Conforming (no minimum)	Conforming (10,000 sq. ft.)
Parking	Approx. 15 spaces for a 2880 sq. ft. commercial building	Conforming (flexible)	Conforming (14 spaces minimum @ 1 space/200 sq. ft.)
Outside storage	Cars in paved parking area	Non-conforming (requires screening from street and residential areas)	Conforming
Fences	6' Chain link with barbed wire around property line	Conforming	Conforming
Signs	Pole sign <15' height, <70 sq. ft. sign area; overhangs sidewalk	Non-Conforming – height Conforming – sign area (7' ht @ 40 sq. ft.)	Conforming (55' ht @ 300 sq. ft.)
Landscaping	None	Non-conforming (front yard setback areas to be landscaped)	Conforming
Future expansion	None proposed	Legal non-conforming uses are allowed to expand by right up to 10% of the use intensity or provisionally if the expansion itself is consistent with the district's performance standards. For example, the building could move closer to the street and be consistent with setbacks. However, a new outdoor storage area for cars under repair would have to be screened. Any "X" performance standard can be	Building can expand within the limits of the existing setbacks. Landscaping and parking required if over 50% expansion.

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		<i>waived by the Planning Director if determined to be unnecessary to the scope and nature of the development.</i>	
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1515 SE 6th Ave

		X-1	C-4
Existing use	Storage	Non-conforming	Non-conforming
Front setback	Approximately 0' (6 th Ave)	Conforming (0'-15')	Non-conforming (25')
Rear setback	Approximately 85'	Conforming (0'-25')	Conforming (25')
Side setbacks	Approximately <2'	Conforming (0'-8')	Non-conforming (10')
Lot size	3,485 square feet	Conforming (no minimum)	Non-conforming (10,000 sq. ft.)
Parking	2-3 spaces for 702 sq. ft. of warehousing	Conforming (flexible)	Conforming (1 space/1000 sq. ft.)
Outside storage	Inoperable cars and parts in paved parking area	Non-conforming (outdoor storage not allowed)	Non-conforming (may be a nuisance code violation)
Fences	6' chain link with barbed wire around side and rear property line	Conforming	Conforming
Signs	None	-	-
Landscaping	None	Conforming (No front yard)	Conforming
Future expansion	None proposed	The use is currently not permitted and could not expand without changing to a conforming use.	The use is currently not permitted and could not expand without changing to a conforming use.

1517 SE 6th Ave

		X-1	C-4
Existing use	Grocery store	Conforming	Conforming
Front setback	Approximately 0' (6 th Ave)	Conforming (0'-15')	Non-conforming (25')
Rear setback	Approximately 35'	Conforming (0'-25')	Conforming (25')
Side setbacks	Approximately 0'	Conforming (0'-8')	Non-conforming (10')
Lot size	6,098 square feet	Conforming (no minimum)	Non-conforming (10,000 sq. ft.)
Parking	5 max. spaces for 3,312 sq. ft. of commercial building	Conforming (flexible)	Non-conforming (16 space minimum @ 1 space/200 sq. ft.)
Outside storage	None visible	Conforming (None allowed)	Conforming (Outside display allowed)
Fences	6' chain link with barbed wire overhanging side property line	Non-conforming (barbed wire not allowed to overhang adjacent property)	Non-conforming (barbed wire not allowed to overhang adjacent property)
Signs	20 sq. ft. wall sign	Conforming (allowed up to 70 sq. ft per	Conforming (55' ht @ 300 sq. ft.)

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		sign or 100 sq. ft. total)	
Landscaping	None	Conforming (No front yard)	Conforming
Future expansion	None proposed	Building cannot expand without Planning Director approval to waive required parking spaces.	Building cannot expand without BZA variance for required parking spaces.

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request has been submitted to all applicable reviewing agency staff for consideration and comment. No significant issues or concerns were expressed by reviewing staff relative to code compliance or the provisions of public services other than what has been noted in the staff report.

ADDITIONAL FACTORS:

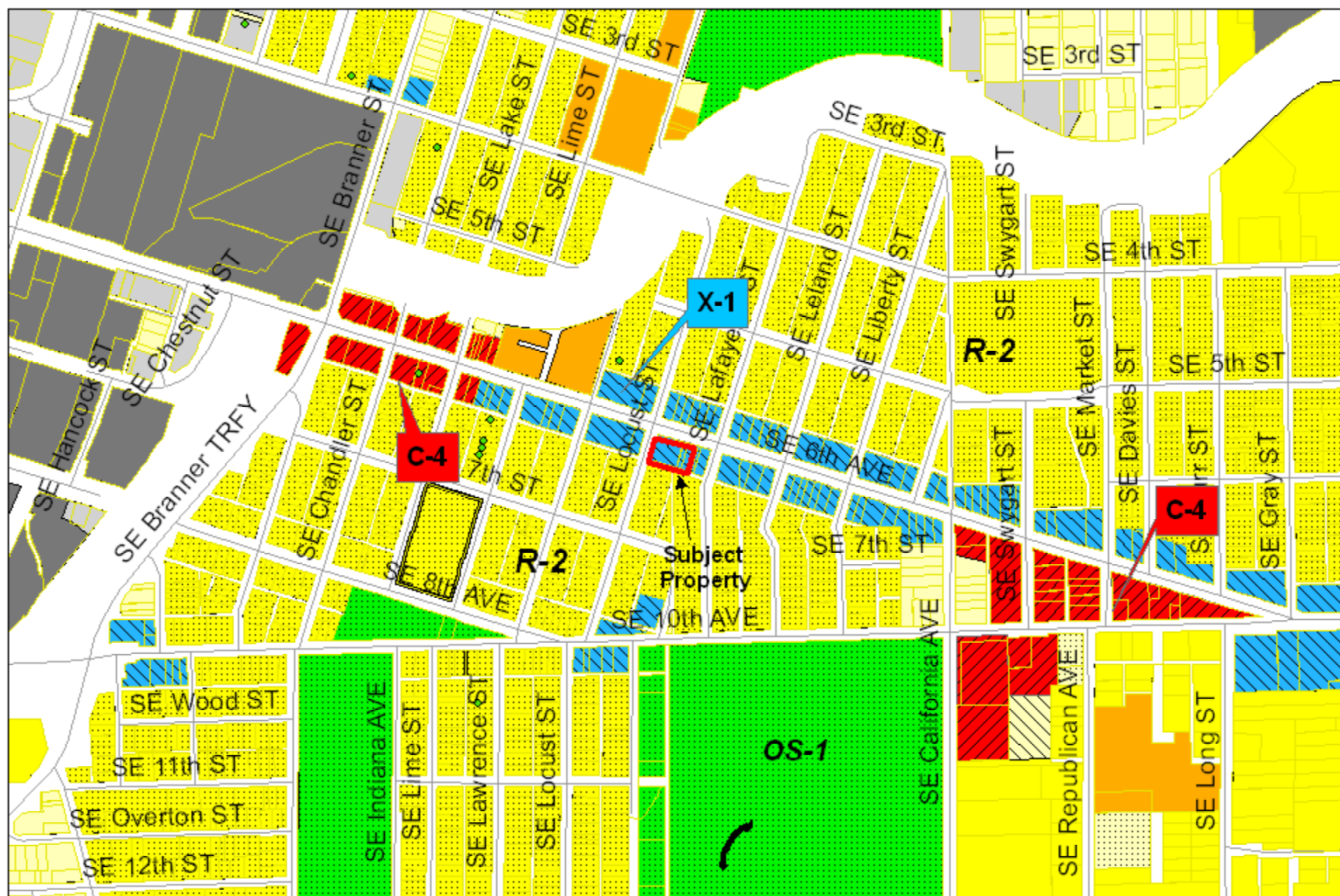
1. Neighborhood Improvement Association: East Topeka South NIA voted in favor of the request.
2. Capitol Plaza Area: Not Applicable.
3. Flood Hazard Area: Not Applicable.
4. Airport Hazard Area: Not Applicable.
5. Historic Properties: Not Applicable.

STAFF RECOMMENDATION:

Based upon the above findings and analysis, Planning Staff recommends **DISAPPROVAL** of this proposal. Two additional options are listed below for further consideration by the Planning Commission:

1. Recommend the applicant apply for a Conditional Use Permit allowing an Automotive Service Station, type II or III at 1507 SE 6th Avenue in order to lock-in conditions of any future expansion to the existing building.
2. Recommend the applicant to continue the case until the Unified Development Code is completed. Under the current draft UDC, the “X” districts are being replaced with composite zoning districts which may address some of the applicant’s concerns about the existing zoning.

Prepared by: Bill Fiander
Deputy Director



2006 Aerial



Topeka Planning Department

Z07/17 Michael J. and Bonnie M. Gish



2006 Aerial



Topeka Planning Department

Z07/17 Michael J. and Bonnie M. Gish

DRAFT

**Minutes of the
Topeka Planning Commission
September 17, 2007**

207/17 by Michael J. and Bonnie M. Gish requesting to amend the District Zoning Classification from "X-1" Mixed Use District **TO** "C-4" Commercial District on property located at 1507, 1515 and 1517 E. 6th Street. **(Fiander)** Bill Fiander summarized the staff report.

Proponents:

Michael Gish, property owner, spoke in favor of the request. He said he and his wife had thought about the options that were offered by staff and decided to still pursue rezoning to C-4. He said it worked before and it will still work. We talked to the Planning staff in depth about our options. He said the C-4 zoning fit our needs and that is still where we would like to go.

Mark Boyd asked what the zoning on the property was prior to 2003? Mr. Fiander replied C-4 as it was all along 6th Street. He said there was a mix of residential and commercial properties between Golden and Branner. He added it is more residential east of Golden. Mr. Boyd said this is a difficult decision because I see both sides of the issue. I understand what was there prior to 2003 functioned for several years. Then a neighborhood plan was created for the area and a composite type zoning was created. He said one of the options listed in the staff report is to wait until the UDC is rewritten which may solve some of the applicants problems. If we are already targeting this area to change from X-1 in the re-write of the UDC, would it make a difference if we rezone it now to C-4? He said he doesn't see how surrounding properties would be affected by C-4 zoning on this property. David Thurbon said he feels the mixed use district solves a lot of problems. It makes East 6th Street a corridor to the city. In the mixed use district setbacks are not required and off street parking is allowed. Car lots are not allowed, with a conditional use permit, in the mixed use district. With the applicants request of C-4 zoning they will be required to have on site parking. They will need a setback variance from the Board of Zoning Appeals which may be difficult. In this case it is created by the applicant. He said in the X Districts there are design standards which creates a good quality development. He said the trade off is design standards for more expansion flexibility. We thought the X District was much better along this corridor. Mr. Boyd asked if the X Districts have proven themselves? Mr. Thurbon said there hasn't been much development in the X Districts since they have been created.

Kimberly Scott said they had C-4 zoning before and we changed them to X District? Mr. Thurbon replied yes. Ms. Scott asked why they have to follow the X District regulations now? Mr. Thurbon stated their current building meets the C-4 standards and it could also be accommodated in the X District. Doug Bassett asked if staff knows what the applicant wants? Mr. Thurbon replied yes but they don't have a site plan developed yet. They want to expand their current business. They think they have lost value on their property in the X District. Howard Blackmon asked if all along 6th Avenue was C-4 because it used to be a highway? Mr. Thurbon replied the C-4 was there. There are a lot of corridors that are striped zoned like this all over the country. Mr. Blackmon asked if that is how zoning is on Topeka Boulevard? Mr. Thurbon said Topeka Boulevard is a little different because there is room for frontage roads. It is still a highway. Mr. Blackmon said he drove down 6th Street and we treated east 6th different than west 6th. We made East 6th Avenue it all X District. You can have residential in X District zoning. Mr. Blackmon said there are residential areas on West 6th Street. It is mixed in amongst the commercial. I think we had a real opportunity to do some developing over there quite a while back. The people on East 6th Avenue didn't understand what the rezoning to X District meant and how it would affect their property. Now they believe it devalued their property.

Fred Sanders said in studying the East Topeka Plan the number of people that voted to downzone this area was zero. The people in East Topeka want to create jobs. He said there has been a 13.4% drop in their population over the last few years. They are asking for their zoning back. He said a conditional use permit is not zoning. It is a permit. The NIA didn't ask for East 6th to be down zoned. This is a major arterial, from Branner to Golden. He said he got the information out of the transportation plan. Right now 5 lanes are being put in from Golden to Market Street. He said he understands they want to make all of 6th Street five lanes. We down zoned about the time we were talking about making 6th Street 5 lanes. We are here to represent what is best for the city. He said East 6th Street is a good corridor for creating small jobs. Car lots are not bad but are not allowed by right in X Districts. They create a lot of sales/property tax. We lost two car lots on East 6th Street recently. We need to help them. We need to have land available for business. And we need proper zoning in place for those businesses to come in. There are many small businesses that thrive in this area. We need to put the right zoning there to make it better for them. I don't see a problem reinstating C-4 zoning on East 6th Street. Mr. Thurbon stated the neighborhood plan doesn't show widening of 6th Street. We would not make a recommendation to rezone due to a widening of a street. That would be unethical. He added there isn't enough room to widen 6th Street to five lanes all the way down west of Market. Mr. Boyd asked what staff's opinion is on C-4 zoning for the property? Mr. Thurbon stated he thinks the X District is a better fit for what they want to do and for this

corridor. This is an important case. If this is approved it will create spot zoning in this area. In my mind we would have to change the whole corridor to C-4. It would be a major amendment to their neighborhood plan. Mr. Boyd said asked if this is considered a down zoning to staff or just a rezoning? If we are talking about two similar zonings together does it really make it spot zoning? He said if this was a true down zoning then I could see the amendment to the neighborhood plan but I don't at this point. I see it as a similar zoning. Mr. Thurbon said point taken, it may not be necessary to amend the neighborhood plan. He said if there are others to request rezoning it will be setting precedence. If more are requested an amendment would need to be done. Mr. Boyd said if the zoning is going to change on this property with the UDC re-write, I don't see the harm in allowing their request. Mr. Thurbon said there is a balance to be kept between the applicant, neighborhood and city wide interest. He said the X District can accommodate anything allowed in C-4. He said the Planning Commission has to take all interests into account when making their decision.

Mr. Sanders stated the X Districts were created for North Topeka. Mr. Thurbon said that is correct, they are specific to certain neighborhood plans. Mr. Sanders asked why do we keep sticking to X District zoning when we don't use it? He stated the X District zoning is being written out of the UDC. Does this mean it isn't working? He said no body was rushing to bring their business in on East 6th Street. We need to set up zoning so they have a stepping stone. I don't think East 6th Street commercial is the same as Wanamaker commercial. The property owners bought this property as C-4 and that is what they want. Mr. Thurbon asked Mr. Sanders to elaborate on how X Districts aren't working. Mr. Sanders said you don't see many properties that are zoned X coming to us or anyone wanting X District zoning. Mr. Thurbon said X Districts are only implemented as a part of neighborhood plans. There have been a few. Mr. Sanders said there are many successful businesses on East 6th Street. The property is at a lower price which is good for small business owners. He said C-4 zoning is easily read in the book as to what is allowed. For the X Districts they have to go to staff and discuss what is allowed. Mr. Thurbon said he believes the Planning Commission understands the difference between C-4 and the X Districts and they have to decide what is best for this corridor. Mr. Sanders asked if they need a conditional use permit? Mr. Fiander replied no. Their proposal could be approved by staff in the X District but not in the C-4. He said a good way to tell if a zoning is not working is there would need to be a lot of variances. That is the case in C-4. X is much more flexible and doesn't require the variances. Their plan could be approved right now in the X district. Mr. Sanders said you are saying X District is better? Mr. Fiander replied in C-4 zoning they can't expand to the rear of their property without a variance. Mr. Sanders said they could in an X District. Mr. Fiander replied yes. He added the conditional use permit is only to lock in what is agreed upon by staff and the applicant and to removed the nonconforming status of the property. Mr. Sanders asked if the conditional use permit would have a fee? Mr. Fiander replied no. The amount they paid for the rezoning will apply to the conditional use permit.

Jim Brown asked if the variance could be approved in C-4? Mr. Thurbon replied no, it will have to go before the Board of Zoning Appeals, in which it will have to meet certain criteria. The hardship has to be by no cause of the applicant. Ms. Scott said the purpose of this application is to change the zoning back to C-4 so they can expand or to gain the value back in their property? She asked if they are changed to C-4 would they still be legal non conforming use? Mr. Thurbon replied yes. He said only if it sits vacant for a year then it would lose its legal non conforming use. He said the conditional use permit would take off any non conformity. Ms. Scott asked if they could complete their expansion in C-4? Mr. Thurbon said they would need a variance to the parking requirements and setbacks. Ms. Scott said we don't have a plan to go off of. She said the property use to be zoned C-4 and that is what they want again. Mr. Boyd said it is a land use decision we need to base our actions on. Nothing can be based off of the expansion plan.

Mr. Sanders addressed the applicant to ask what exactly they want to request. Mr. Gish replied C-4 zoning worked here before but after tonight I don't know. He said he just doesn't want to lose what he has. He said his business is not finished growing. I want to be able to work on the little cars and the eighteen wheelers. I don't know what is right. That is why I am here to talk to you. I have to go by what is right. If you are saying my land value is the same in X District as in the C then I don't have a big problem. I just want what is right for me. I see the potential on 6th Street. He said the traffic count is around 6600 cars per day. When I first started there was no traffic. Now look at it. They say the street won't be widened but why wouldn't it, it has been on both ends.

Bonnie Gish, property owner, said we don't like being labeled non conforming. It just means you aren't right. Bankers do look at that non conforming phrase. I want something in writing so people on staff in the future know what is going on. Mr. Sanders asked what made the property non-conforming? Mr. Thurbon said switching to the X District they need a conditional use permit to make them conforming. Mr. Blackmon said if X and C zoning are the same why didn't we take out the non-conforming clause? Mr. Fiander stated when we did re-zoning in East Topeka we didn't look at each property individually. We tried to come up with a zoning that would accommodate most of the area. We left the commercial zoning near the intersections but not here. Mr. Boyd said the Gish's could get a statement from the Planning Department for the lending institution to get around the legal non conforming statement. Ms. Gish said a half mile away there is C-4 both ways. Mr. Thurbon said the property would be conforming in C-4. Mr. Boyd said we understand where you stand to the applicants. Mr. Sanders said he thinks it was unreasonable to rezone the whole corridor to X District zoning. Mr. Thurbon said residential homes values probably went up. Mr. Fiander said the houses in C-4 were legal nonconforming and in X District they are conforming. Mr. Thurbon said homes in that area were

having trouble getting loans due to legal non-conforming when they were C-4. Mr. Sanders said in C-4 he can do what he does. Mr. Thurbon said that is correct he would only have trouble expanding in C-4.

No one spoke in opposition to the proposal.

Exparte communication – Mark Boyd and Fred Sanders.

Fred Sanders moved approval of C-4 zoning as applied for by the applicant, seconded by Jim Brown. **APPROVAL. (5-1-0) Commissioner Bassett voted no.**

DRAFT

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Topeka Planning Commission
August 20, 2007**

207/17 by Michael J. and Bonnie M. Gish requesting to amend the District Zoning Classification from "X-1" Mixed Use District **TO** "C-4" Commercial District on property located at 1507, 1515 and 1517 E. 6th Street. **(Fiander)** Bill Fiander summarized the staff report.

Discussion by members:

Fred Sanders said he understands the X Districts aren't working out and are being taken out of the UDC. Mr. Fiander said they are recommended to be phased out to make our zoning more composite. The X District was created prior to adoption of the landscape and site plan ordinances that this type of zoning would handle. He said he thinks with the rewrite of the UDC it will bring about more mixed use districts. Mr. Sanders said some of the setbacks are inconsistent in this area. From Branner to Golden the C-4 zoning has been there for years so how can they not meet those setbacks. Mr. Fiander stated what is currently there today can not be replicated from a zoning stand point. Properties have to have 25 foot setbacks. In the X Districts it allows the property owner to build right up to the property line. Mr. Sanders asked if residential homes could be built on these properties? He said you can build residential home in any zoning. Mr. Fiander said in commercial districts you can not build on the ground floor. Mr. Sanders asked can residential be built on light industrial zoned property? Mr. Fiander said not since 1992. Howard Blackmon said in looking at east 6th Street compared to west 6th Street, I wonder if we made a mistake changing this zoning to the X District. He said do we ever reach a point where we need to rectify the mistake. You see some unique things on 6th Street. I don't think all of the people that attended the neighborhood meetings understood or know what they wanted. They thought it was going to be an exciting change for the neighborhood. I find things that affect people they don't understand until after the fact. The people along east 6th Street who lost their commercial zoning didn't really didn't understand what was going on back then. Mr. Sanders said if you look in the east Topeka plan the people wanted more businesses. It is shown in the plan that the people did not vote for down-zoning in this area. The main thing people wanted is jobs in their community. The east Topeka plan was implemented in 2002. There were supposed to be 700 to 800 houses built not sure if that has been done. The small businesses are the backbone to east 6th street. East 6th Street is expanding from Golden to Market which will help the businesses. This will be a major arterial.

Proponents:

Michael Gish, owner, spoke in favor of the proposal. He said we started this business when we were first married in 1974. We didn't have a lot of money when we opened our business. We went to the cheaper side of town to open. This is an older building. The rent was cheap back then. We have since bought the property and the property next door as well. There was an abandoned gas station and 2 houses. We demoed all of it and rebuilt in 1979. It takes awhile to build a business to what it is today. We have expanded the business twice. We want to expand the business again. We have long term employees. The mixed use district was hard to understand but now understand that I can only expand by 10%. Need an additional 40x50 expansion for a piece of equipment. We need C-4 zoning to do this. This will add two additional employees. He said he has purchased the property behind the current location as well. This business has only improved the neighborhood. I have helped other residents with bills. Bought the old grocery store and spent \$85,000 to rebuild and put in a new business. Just want to hang on to what we started.

Kimberly Scott asked if under the current zoning the piece of equipment could be added? Mr. Gish replied no. Ms. Scott said she understands the applicant can work with staff to get around this. She asked the applicant if they had talked to staff? Mr. Gish replied no not at this time. Ms. Scott said she would like to know if the Gish's can do what they want in the X district. Mr. Fiander stated a 10% expansion is allowed by right and anything above that we have to look at X District standards. One standard is the landscaped front yard setback. In this case it would likely not be required. It is hard to guess what we are dealing with because we haven't been presented with a plan. Parking will be an issue but can be waived under the X District standards. An enclosed business would be more welcomed. The standards weren't set up so they couldn't expand but made to be more compatible with surrounding properties. There are going to need some flexibility to expand 2000 ft. Ms. Scott asked why the Gish's felt it was necessary to go back to the C-4 District because X District seems to give more flexibility.

Bonnie Gish, owner of the property, stated the rezoning to X District has reduced our property value. When we are non-conforming it is hard to sell the business to someone. It cut our retirement in half. We have always conformed to city requests. The east Topeka North NIA agrees with our request. The people in the neighborhood were promised a lot of different things and we didn't get any of it. They cut the value of our land because it is nonconforming. We have worked very hard in this neighborhood. When the rezoning was done it cut our value. The neighborhood plans have no money. She said the meetings at the Salvation Army showed a beautiful plan and it was all on paper. Nothing was implemented

from the neighborhood plan. She stated the only people putting money into the neighborhood is the neighborhood. Mr. Sanders asked Mr. Simnitt if he had ever auctioned property that was zoned X? Mr. Simnitt replied yes in North Topeka. He added the property sold for a bit less. Another was old Grant School. The property has X zoning except in the southwest corner. The AFL CIO has been at that location for years. They have been running offices. The only way the use could continue is if the property is sold to a non profit. It sold for much less also. He added in the X Districts you lose retail. Mr. Sanders asked if the Heidelberg Café was down-zoned. Mr. Fiander replied it was rezoned to R-1 or R-2. He added he is not sure what the use was on the property where the AFL CIO is located was before its current use. He said it was zoned residential before it was up-zoned to X. Michelle Hoferer said the square footage is 2880 and what you want to do is not quite double. Mr. Gish replied yes. We just want back our C-4 zoning. It is at both ends of the corridor. Mrs. Gish said at the east end of 6th Street the zoning remained commercial and so did the west end on Branner Street. She said it is not fair they retained their commercial zoning. She said the reason the neighborhood was okay with the X zoning is because they don't want the car lots. The residents can't change the zoning only the government can. The people in the area invest in the area not the city. Ms. Scott stated in the staff report it states there are uses that are allowed in the X District but not in C-4. Mrs. Gish said the city had no problem with what we did before the rezoning. Ms. Scott said there are things that aren't conforming in the C-4 District on two of your properties. Mr. Fiander said there are many issues that make you conforming/nonconforming. The nonconforming is a moot point because you are a grandfathered use. You are a legal non-conforming use. Mrs. Gish said the statement legal non-conforming is what reduces our property value. Mrs. Gish said she doesn't understand how C-4 worked before and why it doesn't work now. We are looking at further expansion in other ways and we just want the C-4 zoning. It is on both ends of 6th Street why not here?

In this area, do you expect anything other than ma and pa stores? Do you think these companies will ever expand in the X District? Mr. Thurbon said he thinks the X District actually offers more flexibility than straight zoning. You can change from one conforming use to another use by right. You have a grandfathered clause in all uses in the district you are in. The X Districts allow for flexibility in setbacks whereas straight zoning doesn't. The trade off is design standards are required. In this case there are many things that are non-conforming in C-4 like setbacks. We didn't think X District would take away value we thought it would add because you have more flexibility concerning types of uses, setbacks and parking requirements. For this property they can use the property for any C-4 use. It is hard to expand on these properties with the parking requirements. Mr. Sanders asked if something happens and a non-conforming use ceases does it lose its non-conforming status within 12 months? Mr. Thurbon said the courts have stated they have to have shown intent to abandon the use. Mr. Sanders said if it loses its use then the zoning goes to X District? He then asked if staff has ever been approached to do something in an X zoning District? Mr. Thurbon said he can't recall any because there hasn't been a lot of development in this area. Mr. Fiander said the only development he can recall is the Family Dollar store. Mr. Thurbon stated if the Commission feels the X Districts were a bad idea maybe this should be reviewed further. Mr. Thurbon added the new UDC won't need X Districts. Mr. Sanders said with all of the standards that are required in the X District it will drive the fees up more than if were a C-4 District. Mr. Thurbon said no matter what a site plan is needed. Mr. Blackmon asked what would they have to do if they to expand if they were in C-4 zoning? Mr. Thurbon said they do not meet current setbacks and they would have to go to the BZA for setback and parking variances. He added that is just a guess because a site plan has not been submitted.

Mark Boyd asked the applicants if they are ready to purchase the new equipment right now? Mrs. Gish stated they wanted to make sure they could do what they wanted to before they purchased the equipment. Mr. Boyd added what I am hearing is you may be able to do what you want to do in the existing zoning. Mrs. Gish said she doesn't understand why it can't be done in C-4 now when it could be before. Mr. Boyd said if you are ready to put together a site plan I would do so. This will let them make a determination if this will work in the X District before trying to change it to C-4. Mrs. Gish said she read she could only expand 10%. Mr. Boyd said that is by right and anything further than that has to be reviewed. Mr. Boyd suggested this case be continued until it is determined if the expansion can be done in the X District with a Conditional Use Permit. Mr. Fiander stated it may look better, for financing purposes, by taking off the nonconforming use clause and have a conditional use permit. Mr. Boyd said there would probably be more hurdles if the zoning was C-4 rather than X-1. Mrs. Gish said she doesn't understand why we could do it before but not now. Theron Sims said it will be harder for you in the C-4 District due to being non-conforming. Maybe we need to review all of East 6th Street. Ms. Hoferer said if they add on the bay and it won't bring in a lot more traffic, will they be required to put in so many parking spaces or would they be allowed a variance? Mr. Thurbon replied in X Districts we are allowed to waive parking. He said he doesn't know exactly the details of what he wants to do so it is hard to say how much of a variance would be allowed. Mr. Fiander stated the Planning Director has the right to allow for variances to the parking requirements as long as there is adequate street parking. Mr. Thurbon stated in the C-4 zoning they have to meet the parking requirements period. There is no variance to this requirement. Ms. Hoferer said the proposed use will be an asset to Topeka. It will add more jobs. Mr. Sanders said he believes this property was rezoned so any changes have to be reviewed more in depth. Mr. Thurbon said anything more than a 10% expansion is reviewed. I think it helps improve the neighborhood by allowing more uses but with stipulations to keep it attractive for the neighborhood.

Motion:

Mark Boyd moved to continue the proposal for 30 days, seconded by Theron Sims. Mr. Thurbon said the next Planning Commission meeting is September 17, 2007. They both agreed to continue to the September 17th meeting.

Mr. Sims urged Mr. Gish to consult with staff so not to slow down his development. He said how does a business that has been there for 30 years grow? Mr. Thurbon said in the re-write of the UDC he is proposing a PUD be allowed on property less than one acre that butts up to another zoning district so that it won't affect adjoining properties. Mr. Simnitt stated small business is what is in neighborhoods. Mr. Simnitt stated we contribute to fringe growth because we don't consider the human element within the older neighborhoods. Mr. Thurbon said he feels the X District is in their best interest.

Exparte communications:

Commissioners Boyd, Hoferer and Sanders said they had exparte communications.

Restated motion:

Mark Boyd moved to continue the proposal for 30 days, seconded by Theron Sims. Mr. Thurbon said the next Planning Commission meeting is September 17, 2007. They both agreed to continue to the September 17th meeting.

APPROVAL. (5-3-0) Commissioners Hoferer, Sanders and Simnitt voted no.

Mr. Sims said he would like to discuss the X Districts further at Monday, August 27th Policy meeting. Mr. Thurbon said we can add it to the agenda and if we do not have time to discuss it we will at the September 17th meeting. Mr. Boyd said he would like to discuss some at the policy meeting but vote on it the proposal at the September 17th meeting. He said if in September we haven't discussed it enough we can continue it to the October meeting. Mr. Blackmon said he would like staff to discuss Mr. Gish's options in depth with him. We need something positive to come out of this. This is a unique situation and we need to give it a lot of attention.

Ms. Hoferer asked the Gish's to develop a detailed site plan and submit it to staff so they can better understand what their request is.



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 20, 2007

+ Back Print

DATE:	October 9, 2007	DOCUMENT #:	Z07/18
CONTACT PERSON:	David Thurbon / Bill Fiander		
SECOND PARTY/SUBJECT:		PROJECT #:	
CATEGORY/SUBCATEGORY	014 Ordinances – Non-Codified / 007 Zoning		
CIP PROJECT:	No		
ACTION OF COUNCIL:		JOURNAL #:	
		PAGE #:	

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by proposing zoning on property located at 103 NW Elm Row Avenue from “M-1” Two Family Dwelling District TO “O&I-2” Office and Institutional District. **Final Reading.** (Z07/18) (Council District No. 2) (Planning Commission recommended approval by a vote of 6-0-0.) (Planning Department recommended approval.)

(Approval would allow for office development.)

POLICY ISSUE:

The property in question is adjacent to a “C-4” land use, which makes the possibility of a duplex or single-family dwelling less likely. An office building would act as a transition between these two land uses.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of **6-0-0** at their **September 17, 2007** meeting as referenced in their attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report.

BACKGROUND:

- See staff report
- City Council options:
 - **Adopt** the recommendation of the Planning Commission by Ordinance;
 - **Override** the Planning Commission's recommendation by a two-thirds (6 votes) majority of City Council membership; or
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

Item #20

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Staff Report](#)

[Ordinance](#)

[Zoning](#)

[Aerial](#)

[Application](#)

[Planning Commission Minutes](#)

September 17, 2007
Agenda Item # G-2

ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: Z07/18

by: Paulette Danielson

PROPOSAL: Zone change from “M-1” Two Family Dwelling District TO “O&I-2” Office and Institutional District.

LOCATION: 103 NW Elm Row Avenue Topeka, KS 66608

PARCEL ID NUMBER: 1041703006002000

PRESENT USE: A total of approximately 19,360 sq. ft. on one vacant lot.

PROPOSED USE: Office building.

CHARACTER OF NEIGHBORHOOD: The location of the zoning request is an area of transition between the commercial land uses adjacent to NW Topeka Boulevard and NE US Highway 24, and the low intensity residential blocks located east of N Kansas Avenue. The zoning map in the surrounding neighborhood is a mix of commercial, single and multiple-family residential districts, and even an industrial district as well. The location of the zoning request is currently vacant, as are numerous other properties in the immediate vicinity. Other parcels nearby are currently used for single-family purposes. The United States Postal Service building is located to the west of the zoning change request.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	“C-4” Commercial District	Vacant
South:	“M-1” Two-Family Dwelling District	Single-Family Residence
East:	“M-1” Two-Family Dwelling District	Single-Family Residence
West:	“C-4” Commercial District	Vacant

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: The subject property has remained vacant for some time under the current “M-1” Two-Family zoning class.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED:

Although the subject property is still suitable for multiple-family residential uses, it is possible that the property will remain vacant and underutilized unless it is zoned for more intense uses. It is adjacent to a

September 17, 2007
Agenda Item # G-2

“C-4” land use, which makes the possibility of a duplex or single-family dwelling less likely. An office building, therefore, would act as a buffer between these two incompatible land uses in an area of transition.

CONFORMANCE TO COMPREHENSIVE PLAN: As designated by the *Future Land Use Plan – 2030*, this area is classified as *Commercial / Office* land use. The proposal, therefore, is consistent with the Comprehensive Plan.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: Reclassification of the property to “O&I-2” should not have detrimental effects upon nearby properties. The properties in the immediate area of the zoning request have not experienced tremendous homeowner investment in quite some time, which is most likely due to the fact that this is an area of transition between the surrounding high and low-intensity zoning districts. Re-zoning to allow office uses will serve as a softer transition and should help lead to further investment in the surrounding properties, not less.

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: There will be no gain to the public by denying the request of the landowner since reclassification of the property will allow the area to develop and become more utilized. It is also consistent with the Comprehensive Plan.

AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS:

Minimum Lot Area: **Compliant-** 19,360 sq. ft. - (minimum lot area is 7,500 sq. ft.)

Setbacks: N/A.

Platting: **Compliant-** Lot 21, Elm Row Avenue, Commonwealth Subdivision.

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request was submitted to all applicable reviewing agency staff for consideration and comment. All issues or concerns that were expressed by reviewing staff relative to code compliance or provisions of public service have been resolved or will be addressed at the building permit stage.

ADDITIONAL FACTORS:

1. Neighborhood Improvement Association: N/A.
2. Flood Hazard Area: N/A.
3. Airport Hazard Area: N/A.

September 17, 2007
Agenda Item # G-2

4. Historic Properties: N/A.

STAFF RECOMMENDATION: Based upon the above findings and analysis, the planning staff recommends the following:

1. APPROVAL for “O&I-2” Office and Institutional District.

Prepared by:
Cylus Scarbrough, Planner I

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by proposing zoning on property located at 103 NW Elm Row Avenue from "M-1" Two Family Dwelling District **TO** "O&I-2" Office and Institutional District. **(Z07/18) (Council District No. 2)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by classifying the following described property:

Elm Row Avenue, Lot 21, Commonwealth Subdivision, City of Topeka, Shawnee County, Kansas.

from "M-1" Two Family Dwelling District **TO** "O&I-2" Office and Institutional District.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka, _____, 2007.

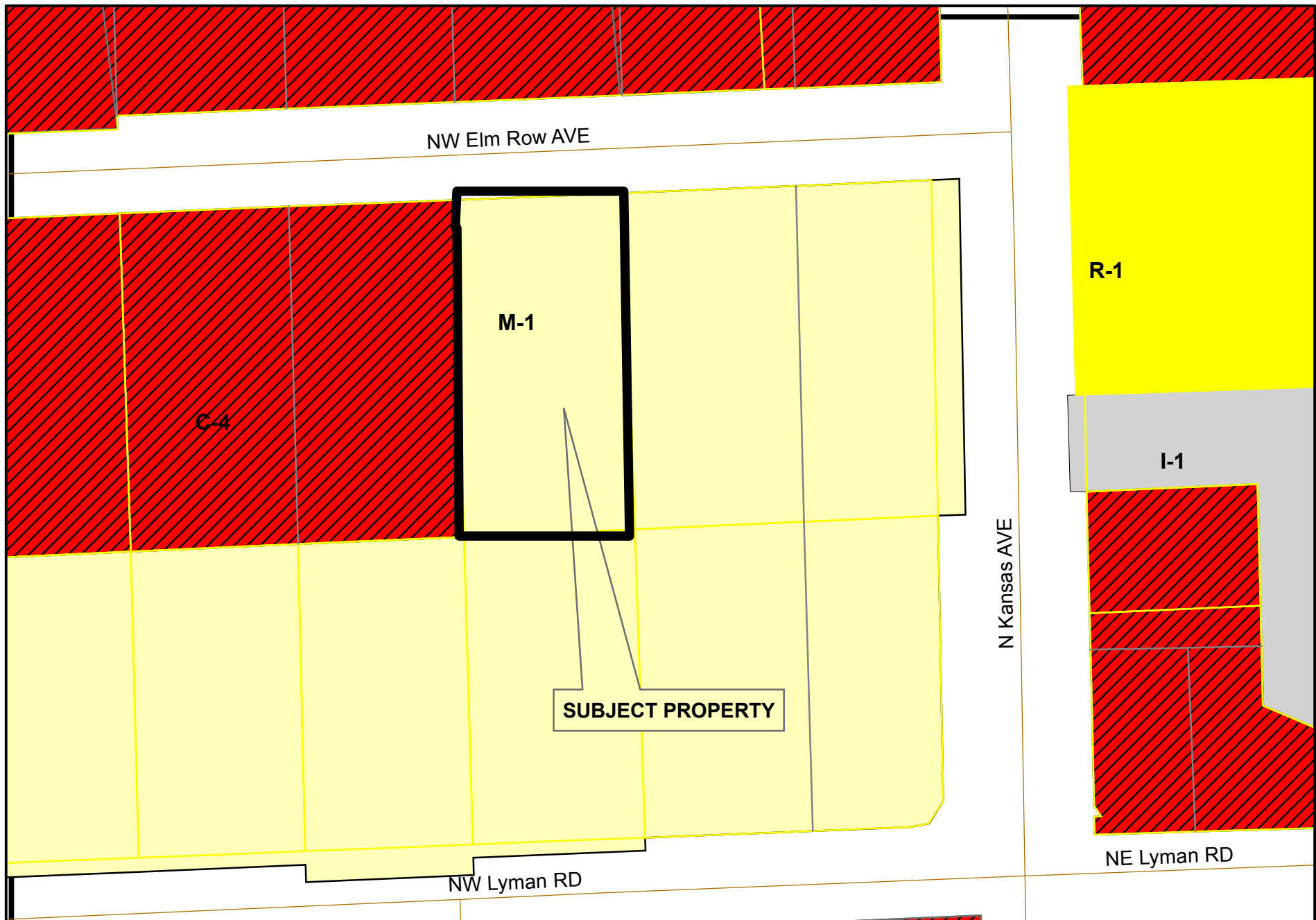
William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X



Z07-18 by Danielson



Z07-18 by Danielson



Application Form Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): Paulette Danielson

Street Address: 2321 NE. 39th St

City: Topeka State: Ks Zip: 66617 E-mail: _____

Business phone: 785-272-7500 Home phone: 785-246-2436 Fax: _____

Authorized Owner Representative (if any): Same as above

Street Address: _____

City: _____ State: _____ Zip: _____ E-mail: _____

Business phone: _____ Home phone: _____ Fax: _____

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

Street Address: _____

City: _____ State: _____ Zip: _____ E-mail: _____

Business phone: _____ Home phone: _____ Fax: _____

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: Paulette Danielson

Owner 1 Signature: Paulette Danielson Date: 8/1/07

Owner 2: _____

Owner 2 Signature: _____ Date: _____

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): _____

103 NW Elm Row Ave.

Legal Description of Property: lot(s) 21 block Elm Row Ave Subdivision Commonwealth
(if unplatted, attach metes and bounds description)

Total Area (acres/square feet): 18,915 sq ft

Type of Application:

1. Re-zoning from: M-1 to: O & I 2

2. Conditional Use Permit proposed use: _____

Existing Use (# of dwelling units, square feet, etc.): N/A

How long has the existing use been on the property? N/A

Proposed Use (# of dwelling units, square feet, etc.): one

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? yes If Yes, when? June 25, 07

FOR OFFICE USE ONLY

Date submitted: 8/3/07

Date notice sent: 8/24/07

Application no.: 207/18

Date advertised: 8/24/07

Filing fee: 650⁰⁰ Receipt no.: 11607

Date of hearing: 9/17/07

Quarter section map no.: _____

Council district: #2

CHECK YES OR NO

Capital Plaza Area: Yes _____ No _____

Within Historic Site Environs: Yes _____ No _____

If Yes, what is it?: _____

100 yr Floodplain: Yes _____ No _____

National/State Historic Register: Yes _____ No _____

Local Historic Resource: Yes _____ No _____

Airport Hazard Area: Yes _____ No _____

Neighborhood Association: Yes ☒ No _____

Name of N.I.A./N.A.: North Topeka East
(Inactive)

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. Why is the land ~~not~~ suitable for the uses to which the property is ^{PROPOSED TO BE} ~~currently~~ zoned?

- It is located within one lot to Kansas Ave and near businesses that surround the area

2. What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?

- Brings business to the area
- Improves land and property while maintaining a quiet neighborhood.

3. How does this request relate to any adopted neighborhood/land use plans by the City?

CONSISTENT W/ 2030 LAND USE PLAN (COMM./OFFICE)

~~1/1~~

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

- a. Location and size of water main serving site:

12" CIKON Main North Side of Elm Row

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

YES

- c. If other than City of Topeka, identify water district provider: N/A

2. Sanitary Sewer

- a. Location and size of sewer main serving site:

8" VCP Sanitary Wye available
under Elm Row

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

No known Problems

- c. If other than City of Topeka, identify sewer district provider: N/A

3. Storm Drainage

- a. How will storm water run-off be handled on site?

Will drain to current drainage ditch

- b. Does the current storm sewer system have adequate capacity for proposed use?

Yes

4. Traffic Circulation

- a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?

Yes

-pavement 40' w

30' w Kansas Ave - East
130' +/- Topeka Blvd - West

Elm Row Ave
has 55'
Right of way
Pavement 25' wide

- b. What are the site's existing or proposed access points? pavement 25' w

Elm Row Ave and current drive

- c. Will any street improvements or traffic control improvements be required?

No

DRAFT

**Minutes of the
Topeka Planning Commission
September 17, 2007**

Z07/18 by Paulette Danielson requesting to amend the District Zoning Classification from "M-1" Two Family Dwelling District **TO** "O&I-2" Office and Institutional District on property located at 103 NW Elm Row Avenue. **(Scarborough)** Bill Fiander summarized the staff report.

Proponents:

Paulette Danielson, property owner, spoke in favor of the proposal. She said she is planning to build a building on this property to provide services and classes to the public. She said she has talked to the neighbors to inform them of her intentions.

No one spoke in opposition to the proposal.

Exparte communications - none

Kimberly Scott moved approval as written by staff, seconded by Jim Brown. **APPROVAL. (6-0-0)**



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 20, 2007

+ Back Print

DATE: October 9, 2007
CONTACT PERSON: Bill Fiander/David Thurbon DOCUMENT #:
SECOND PARTY/SUBJECT: Wanamaker North L.C. PROJECT #: Z07/19
CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 007 Zoning
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 1025, 1029 and 1035 SW Wanamaker Road from "R-1" Single-Family Dwelling District, "O&I-1" Office and Institutional District and "C-4" Commercial District ALL TO "C-2" Commercial District. Final Reading. (Z07/19) (Council District No. 9)(Planning Commission recommended approval 6-0-0.) (Planning Department recommended approval.)

(Approval would allow development of the property for neighborhood commercial uses.)

POLICY ISSUE:

Request is consistent with the land use principles of the Comprehensive Plan.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of **6-0-0** at their September 17, 2007 meeting as referenced in their attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report.

BACKGROUND:

- See Staff Report.
- City Council options:
 - **Adopt** the recommendation of the Planning Commission by Ordinance;
 - **Override** the Planning Commission's recommendation by a two-thirds majority (6 votes) of the City Council membership; or,
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

Item #21

ATTACHMENTS:

[Ordinance](#)

[Staff Report](#)

[Aerial](#)

[Zoning Map](#)

[Application \(4 pages\)](#)

[Planning Commission Minutes](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 1025, 1029 and 1035 SW Wanamaker Road from "R-1" Single-Family Dwelling District, "O&I-1" Office and Institutional District and "C-4" Commercial District **ALL TO** "C-2" Commercial District. **(Z07/19) (Council District No. 9)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by classifying the following described property:

Tract 1:

Part of SE ¼ of Section 32, Township 11 south, Range 15 east of the 6th P.M., in the City of Topeka, Shawnee County, Kansas described as follows:

Beginning 560.5 feet south and 50 feet west of the northeast corner of said SE 1/4; thence south 182 feet; thence west 214 feet; thence north 182 feet; thence east 214 feet to the point of beginning.

A portion of Tract 2:

Lot 1, on Wanamaker Road, in Vitt Acres, in Shawnee County, Kansas less the east 10 feet thereof, as taken in condemnation case No. 89110.

Lots 1 and 2, Block A, Vitt Acres Subdivision No. 2 in the City of Topeka, Shawnee County Kansas.

Reservations from the exceptions to Conveyance and Warranty:

Easements, right-of-way, and prescriptive rights, whether of record or no; all presently recorded instruments, including liens and conveyances, that affect the property taxes for the current year have been prorated and are assumed by Grantee.

from "R-1" Single-Family Dwelling District, "O&I-1" Office and Institutional District and "C-4" Commercial District **ALL TO** "C-2" Commercial District.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka, _____, 2007.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X

September 17, 2007
Agenda Item #G-1a

ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: Z07/19

by: Wanamaker North L.C.

PROPOSAL: Amend the District Zoning Classification from "R-1" Single-Family Dwelling District, "O&I-1" Office and Institutional District and "C-4" Commercial District TO "C-2" Commercial District.

LOCATION: 1025, 1029 and 1035 SW Wanamaker Road.

PARCEL ID NUMBER: 0993204001042000, 0993204001044000.

PRESENT USE: The property is an approximately 1.90 acre vacant tract.

PROPOSED USE: The applicant is seeking the rezoning to accommodate development of the property for moderate to medium intensity commercial uses.

CHARACTER OF NEIGHBORHOOD: The property lies within a developing regional commercial corridor with a large area of vacant undeveloped ground bordering the subject property to the west.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	"C-2" Commercial District	Undeveloped
South:	"R-1" Single-Family Dwelling District	Residential
East:	"C-4" Commercial District	Auto Dealer/Vacant Restaurant
West:	"R-1" Single-Family Dwelling District	Undeveloped vacant ground

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION:

That portion of the subject site located north of 1029 SW Wanamaker Road has remained vacant and zoned for residential use since the area was annexed in 1980. The property located at 1029 SW Wanamaker Road was rezoned from "A" Single-Family to "D&O" Multiple-Family and Office District by Ordinance No. 15166 in November 1983 and has remained in use for office purposes since that time. The property located at 1035 and 1039 SW Wanamaker Road was originally rezoned from "A" Single-Family District to "F" Neighborhood Shopping District in 1983 which was in turn converted to the current "C-2" Commercial District designation with the adoption of the current zoning code in 1992. In 2001 these sites were rezoned from "C-2"

September 17, 2007
Agenda Item #G-1a

Commercial to their current "C-4" Commercial designation with the adoption of Ordinance 17716 in August 2001. Both locations have remained in use for commercial purposes since that time.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: The property currently has three different levels of zoning; "R-1", "O&I-1" and "C-4". The site's present "R-1" residential classification is not consistent with the established pattern of higher intensity commercial/office zoning in the area. The office and commercial classifications are considered to be the more appropriate of the three classifications given the established pattern of zoning and land use in the area. However, as the site is proposed to accommodate a restaurant type facility the "C-2" classification being proposed, which is intended for moderate to medium intensity commercial uses is deemed to be the most appropriate for the site. Heavy commercial uses as allowed under the current "C-4" zoning are not necessarily compatible with the types of restaurant and retail uses generally found in this corridor. Therefore, to maintain the present restriction imposed by the sites multiple zoning classifications is not considered to be the most efficient zoning.

CONFORMANCE TO COMPREHENSIVE PLAN: The *Comprehensive Plan* designates this area as *Commercial* land use. The proposal is therefore viewed as being consistent with the plan. The Wanamaker corridor does not fit the neighborhood model concept contained in the 2025 Land Use and Growth Management Plan which states that retail should be located at the arterial street intersections, rather than stripped along the frontage of the arterials. The Wanamaker corridor is a regional shopping destination and is characterized by retail development along the entire three mile stretch between SW 21st Street and SW 6th Avenue. Access management will become more critical as the corridor continues to develop.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: The proposed reclassification would permit the subject property to develop consistent with the Comprehensive Plan's future land use designation for the area and the areas existing zoning pattern. There is expected to be no detrimental effect upon removal of the present restrictions imposed by the current multiple zoning classifications given the surrounding land uses.

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 proposed reclassification would accommodate the development of this property for commercial uses in the moderate to medium intensity range. As no detrimental effects are anticipated, there would appear to be no particular gain to the public health, safety, and welfare by maintaining the present restrictions.

AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area and will not be overburdened by this proposal. There are currently no transportation projects in the City's CIP (2006-2011) affecting this area.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS:

Application: **Complete.**

September 17, 2007
Agenda Item #G-1a

Minimum Lot Area: **Compliant** – +10,000 S.F.

Setbacks: **Compliant**.

Platting: **Compliant** – This request is accompanied by the preliminary/final plat of [P07/30] Wanamaker North Addition Subdivision, which proposes to plat the subject property into a two-lot single block subdivision.

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request has been submitted to all applicable reviewing agency staff for consideration and comment. No significant issues or concerns were expressed by reviewing staff relative to code compliance or the provisions of public services.

ADDITIONAL FACTORS:

1. Neighborhood Improvement Association: Not Applicable.
2. Capitol Plaza Area: Not Applicable.
3. Flood Hazard Area: Not Applicable.
4. Airport Hazard Area: Not Applicable.
5. Historic Properties: Not Applicable.

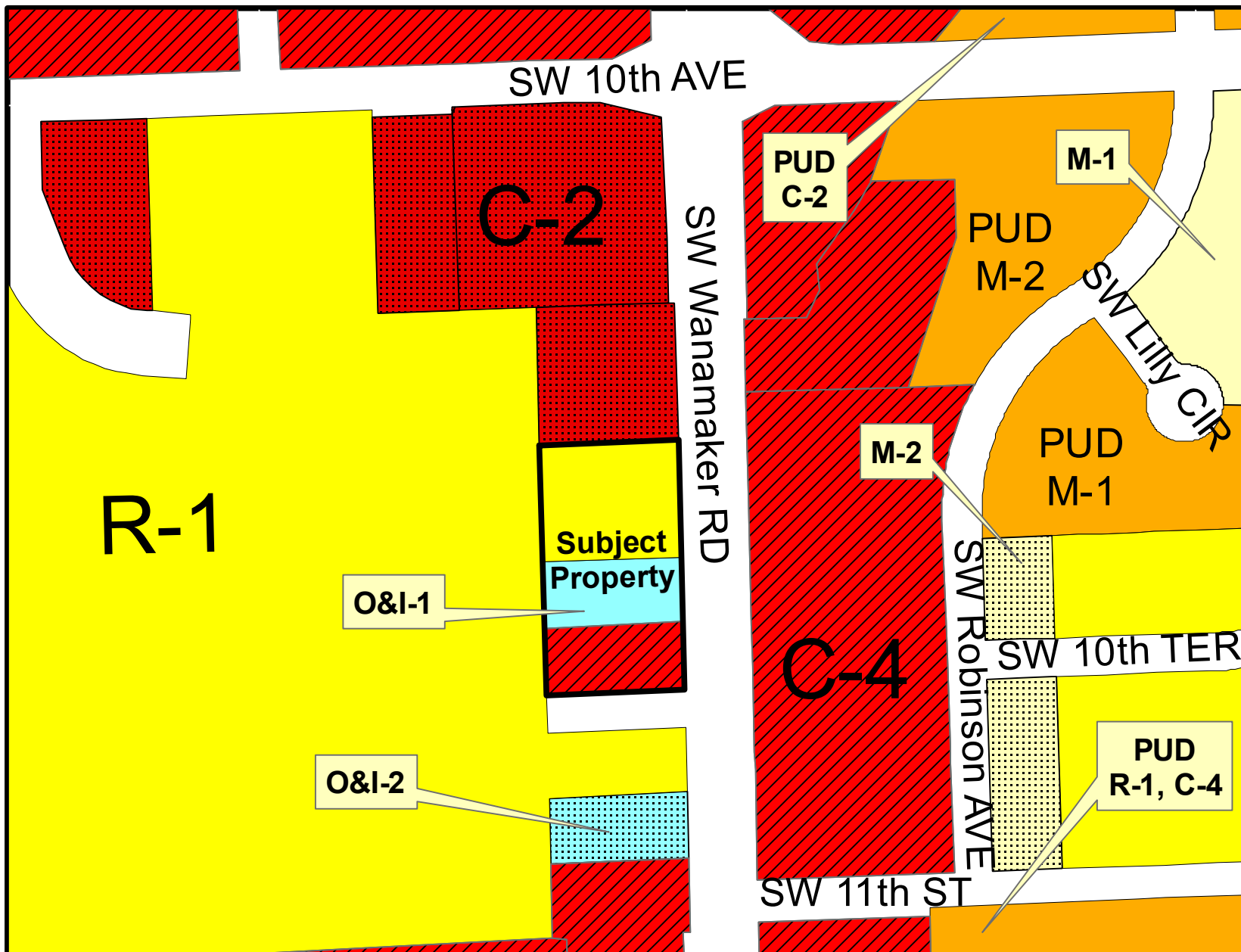
STAFF RECOMMENDATION:

Based upon the above findings and analysis Planning Staff recommends **APPROVAL** of this proposal.

Prepared by: Dean W. Diediker
Planner II



Z07/19 by Wanamaker North L.C.



Z07/19 by Wanamaker North L.C.



Application Form Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): Wanamaker North L.C.

Street Address: 3501 SW Fairlawn Road, Suite 200

City: Topeka State: KS Zip: 66614 E-mail: _____

Business phone: 785-272-1398 Home phone: _____ Fax: 785-272-1796

Authorized Owner Representative (if any): MRV Inc. - Steve Johnson

Street Address: 3501 SW Fairlawn Road, Suite 200

City: Topeka State: KS Zip: 66614 E-mail: sjohnson@mrvcpanies.com

Business phone: 785-272-1398 ext 151 Home phone: _____ Fax: 785-272-1796

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

Bartlett & West Engineers Inc. - Angela Sharp, P.E.

Street Address: 1200 SW Executive Dr.

City: Topeka State: KS Zip: 66615-3850 E-mail: angela.sharp@bartwest.com

Business phone: 785-272-2252, ext. 313 Home phone: _____ Fax: 785-273-8735

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: Wanamaker North L.C. by Jeffrey L. Ungerer, CFO/VP of MRV, Inc., Manager

Owner 1 Signature: *Jeffrey L. Ungerer* Date: 8/1/07

Owner 2: _____

Owner 2 Signature: _____ Date: _____

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): 1025/1029 SW Wanamaker Road
and 1035 SW Wanamaker Road, Topeka, KS, 66604

Legal Description of Property: lot(s) _____ block _____ subdivision See attached
(if unplatted, attach metes and bounds description)

Total Area (acres/square feet): 1.9 AC

Type of Application:

1. *Re-zoning from:* R-1, O&I-1 & C-4 *to:* C-2

2. *Conditional Use Permit proposed use:* _____

Existing Use (# of dwelling units, square feet, etc.): Vacant, an office building, house and out buildings were
recently demolished.

How long has the existing use been on the property? Not sure

Proposed Use (# of dwelling units, square feet, etc.): Anticipated as approximately 11,000 Sq. Ft. of retail and
restaurant space.

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? Yes *If Yes, when?* 7/25/2007

FOR OFFICE USE ONLY

Date submitted: 8/3/07

Date notice sent: 8/24/07

Application no.: 207/19

Date advertised: 8/24/07

Filing fee: _____ **Receipt no.:** _____

Date of hearing: 9/17/07

Quarter section map no.: F/19

Council district: #9

Fee waived, gave credit for PUD 07/3 which is being withdrawn. Will give refund for diff in PUD? zoning fee.

CHECK YES OR NO

Capital Plaza Area: Yes _____ No ☒

Within Historic Site Environs: Yes _____ No ☒

If Yes, what is it?: _____

100 yr Floodplain: Yes _____ No ☒

National/State Historic Register: Yes _____ No ☒

Airport Hazard Area: Yes _____ No ☒

Local Historic Resource: Yes _____ No ☒

Neighborhood Association: Yes _____ No ☒

Name of N.I.A./N.A.: _____

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. Why is the land not suitable for the uses to which the property is currently zoned?

It is currently a mixed zoning of single family residential, commercial and office uses along the highly commercial Wanamaker corridor. As is reflected in the current land use plan, commercial zoning provides for the highest and best use for the subject property, and the down zoning of the C-4 district parcel in conjunction with the change to commercial zoning of the other parcels facilitates the most effective development of the subject property.

2. What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?

Just as the recent improvements near this site at the northwest corner of Huntoon and Wanamaker have been a benefit to the surrounding properties, so would the subject development. The Wanamaker corridor is the commercial hub for the City of Topeka, so the infill of commercial development on undeveloped parcels extends and enhances the character of the neighborhood and surrounding properties.

3. How does this request relate to any adopted neighborhood/land use plans by the City?

There is no existing neighborhood plan. This request is in accordance with the adopted land use plan.

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

- a. Location and size of water main serving site:

18" water main along the west right-of-way of SW Wanamaker Road.

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

Yes

- c. If other than City of Topeka, identify water district provider: _____

2. Sanitary Sewer

- a. Location and size of sewer main serving site:

8" mains along the west property line.

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

Yes

- c. If other than City of Topeka, identify sewer district provider: _____

3. Storm Drainage

- a. How will storm water run-off be handled on site?

It will be conveyed in a private storm sewer system to an on-site detention facility that will have its outfall to the existing channel to the west.

- b. Does the current storm sewer system have adequate capacity for proposed use?

There is not a public system on site, and detention will be provided.

4. Traffic Circulation

- a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?

Yes, SW Wanamaker Road is 80' back to back.

- b. What are the site's existing or proposed access points?

4 existing access points onto SW Wanamaker Road, including a driveway within the 11th street right of way. One access point onto SW Wanamaker Road and one access point onto the SW 11th Street are proposed.

- c. Will any street improvements or traffic control improvements be required?

Street Improvements will be required for S.W. 11th Street to the extent necessary to serve the site.

DRAFT

**Minutes of the
Topeka Planning Commission
September 17, 2007**

Wanamaker North Addition development – Dean Diediker summarized the staff report for both the zoning and subdivision cases discussion is for both as well.

Z07/19 by Wanamaker North L.C. requesting to amend the District Zoning Classification from “R-1” Single Family Dwelling District, “O&I-1” Office and Institutional District and “C-4” Commercial District **ALL TO** “C-2” Commercial District on property located at 1025, 1029 and 1035 SW Wanamaker Road. **(Diediker)**

Proponents:

Angela Sharp, Bartlett & West Engineers, spoke in favor of the proposal. She said this is in the commercial hub of town. We met with a number of staff members in various departments prior to our submittal. We have agreed to one access on Wanamaker and another with property to north. We plan to develop 11th Street from our property as well. We understand the property to the west is worried about the height of the building on this property. They requested the building be only one story. With straight zoning you can't restrict the height and it has been determined it can not be a plat note either. It can only be restricted within a PUD and we don't have enough land for that. She said there are many properties in this area that have more intense zoning which would allow them to have taller buildings. She said the one property has C-4 zoning right now and they could have a building 75 feet in height. She said the tenants that would occupy this building probably won't want a two story building anyway. Mr. Sanders said he doesn't understand why the height of the building would be an issue. Mrs. Sharp said there are trees west of this property and they in the stream buffer which are not to be disturbed. They will block the view more than any building would. Mr. Boyd asked if the applicant agrees to only have the preliminary plat heard tonight? Mrs. Sharp replied yes, we would have liked to have both but we understand the need to get approvals from other departments first.

Opponents:

Bryan Smith, Cavanaugh, Smith and Lemons, spoke not in opposition to the rezoning but the height allowed for the building. He said he is representing property owners of the 35 acres to the west. We are not against the zoning. We are against 60 feet in height along Wanamaker Road. He said his client has one of the last large pieces of acreage left in this area. They have had several big companies interested in the property and one of their questions is visibility. He said in C-1 zoning the building height is 35 feet and C-2 is 60 feet. That is a big jump in height. We are just concerned about the height. Mr. Boyd said this property doesn't have enough acreage for a PUD. He said maybe there could be some agreement amongst the property owners in the area regarding building heights but that is not an issue the city can stipulate. Mr. Smith said his clients aren't against restaurants because they won't build a 60 feet high building. He said obviously my client wants to preserve visibility for his site for future tenants.

Fred Sanders asked if staff had any comments regarding the height? David Thurbon said 60 feet in height is what is allowed in the C-2 zoning district. Height in this area has never been a concern. If the height is too much then parking requirements may be difficult to meet. We don't believe anything more than two stories would be built.

Exparte communications - none

Howard Blackmon moved approval as written by staff, seconded by Kimberly Scott. **APPROVAL. (6-0-0)**



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 12, 2007

+ Back Print

DATE: October 9, 2007

CONTACT PERSON: David Thurbon/Bill Fiander **DOCUMENT #:** N/A

SECOND PARTY/SUBJECT: Strathman Sales Co., Inc. **PROJECT #:** V07E/11

CATEGORY/SUBCATEGORY: 014 Ordinances – Non-Codified / 006 Vacations

CIP PROJECT: No

ACTION OF COUNCIL: **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a platted utility easement in Jefferson Square Subdivision No. 2 located at the southwest corner of SE Quincy Street and SE Lakewood Boulevard, City of Topeka, Shawnee County, Kansas. **First Reading.** (V07E/11) (Council District No. 3)

(Approval would vacate a portion of a platted utility easement and establish a necessary sanitary sewer easement.)

POLICY ISSUE:

N/A.

STAFF RECOMMENDATION:

The Planning Department recommends **APPROVAL** of the proposed vacation conditional to retaining a necessary sanitary sewer easement.

BACKGROUND:

- The Kansas Statutes and Topeka Code Section 130-476(b) requires a public hearing in conjunction with proposed vacation petitions which have been filed in accordance with a prescribed procedure.
- The owner wishes to expand the existing building into the area dedicated as utility easement.
- A sanitary sewer easement will be retained. The ordinance reflects retention of the sewer easement.
- Approval of the vacation should not be construed to imply support for existing or subsequent land development.

BUDGETARY IMPACT:

N/A.

SOURCE OF FUNDING:

N/A.

ATTACHMENTS:

[Aerial](#)

[Application](#)

Item #22

[Vicinity Map](#)

[Public Improvement Easement](#)

[Ordinance](#)

[Legal Advertisement](#)

[Check-off Page](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO.

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of a platted utility easement located at the southwest corner of SE Quincy Street and SE Lakewood Boulevard in Jefferson Square Subdivision No. 2, City of Topeka, Shawnee County, Kansas. **(V07E/11) (Council District No. 3)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That pursuant to the requirements of K.S.A. 12-504 as amended, a petition by Stratham Sales Co., Inc., as property owners, has been filed with the office of the City Clerk, requesting the vacation of the following described platted utility easement located within the City of Topeka, Shawnee County, Kansas:

A utility easement in Block U, Jefferson Square Subdivision No. 2, City of Topeka, Shawnee County, Kansas, as recorded in Book 27, Page 24 at the office of the County Register of Deeds; more particularly described as follows:

Beginning at the northeast corner of Lot 1, in said Block U; thence, coincident with the East line of said Lot 1, South 36 degrees 07 minutes 00 seconds West 124.75 feet; thence North 00 degrees 39 minutes 07 seconds East 163.13 feet to a point on the North line of said Lot 1; thence coincident with said North line, on a non-tangent curve to the left, said curve having a radius of 320.00 feet, a central angle of 12 degrees 55 minutes 51 seconds, and an arc length of 72.22 feet; thence, continuing along said North line, South 53 degrees 53 minutes 00 seconds East, to the point of beginning; containing 5,713 square feet, more or less.

Section 2. That said petition has been duly published for two (2) consecutive weeks in a newspaper of general circulation and on October 16, 2007, the petition is ready for determination by the Council of the City of Topeka, Kansas.

Section 3. That the Council of the City of Topeka, after being duly informed and hearing the evidence presented finds that:

- a. Legal notice was given as required by K.S.A. 12-504 as amended.
- b. No private rights will be injured or endangered by such vacation.
- c. The public will suffer no loss or inconvenience by such vacation.

Section 4. That the Council of the City of Topeka does hereby find that justice requires the petition of vacation be granted and does hereby order the vacation of the below described platted utility easement located within the City of Topeka, Kansas:

A utility easement in Block U, Jefferson Square Subdivision No. 2, City of Topeka, Shawnee County, Kansas, as recorded in Book 27, Page 24 at the office of the County Register of Deeds; more particularly described as follows:

Beginning at the northeast corner of Lot 1, in said Block U; thence, coincident with the East line of said Lot 1, South 36 degrees 07 minutes 00 seconds West 124.75 feet; thence North 00 degrees 39 minutes 07 seconds East 163.13 feet to a point on the North line of said Lot 1; thence coincident with said North line, on a non-tangent curve to the left, said curve having a radius of 320.00 feet, a central angle of 12 degrees 55 minutes 51 seconds, and an arc length of 72.22 feet; thence, continuing along said North line, South 53 degrees 53 minutes 00 seconds East, to the point of beginning; containing 5,713 square feet, more or less.

Section 5. That the Council of the City of Topeka does hereby find that justice further requires the provision for a sanitary sewer easement to be established over the described property as set forth in Section 4 and does hereby order the retention of the below described area as a sanitary sewer easement:

A utility easement in Block U, Jefferson Square Subdivision No. 2, City of Topeka, Shawnee County, Kansas, as recorded in Book 27, Page 24 at the office of the County Register of Deeds; more particularly described as follows:

Beginning at the northeast corner of Lot 1, in said Block U; thence, coincident with the East line of said Lot 1, South 36 degrees 07 minutes 00 seconds West 124.75 feet; thence North 00 degrees 39 minutes 07 seconds East 163.13 feet to a point on the North line of said Lot 1; thence coincident with said North line, on a non-tangent curve to the left, said curve having a radius of 320.00 feet, a central angle of 12 degrees 55 minutes 51 seconds, and an arc length of 72.22 feet; thence, continuing along said North line, South 53 degrees 53 minutes 00 seconds East, to the point of beginning; containing 5,713 square feet, more or less.

Section 6. This vacation shall not affect any other underlying easements or restrictions whether platted or by instrument.

Section 7. The City Clerk is hereby directed to certify a copy of this ordinance to the Shawnee County Register of Deeds Office for appropriate recording.

Section 8. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka _____, 2007.

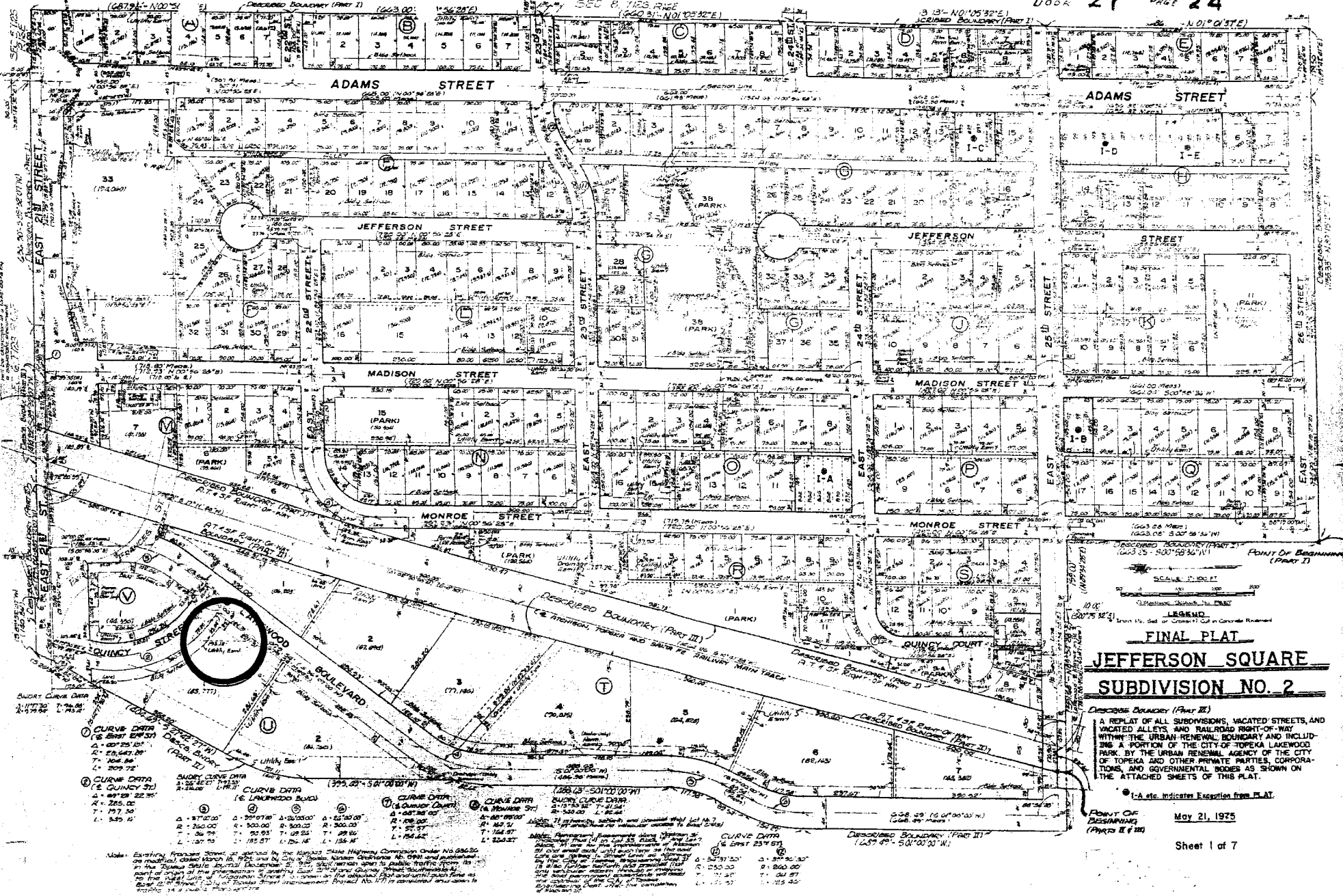
William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified __

Not To Be Codified X



FINAL PLAT
JEFFERSON SQUARE
SUBDIVISION NO. 2

Describe Boundary (Part II)

A REPLAT OF ALL SUBDIVISIONS, VACATED STREETS, AND VACATED ALLEYS, AND RAILROAD RIGHT-OF-WAY WITHIN THE URBAN-RENEWAL BOUNDARY AND INCLUDING A PORTION OF THE CITY OF TOPEKA LAKEWOOD PARK, BY THE URBAN-RENEWAL AGENCY OF THE CITY OF TOPEKA AND OTHER PRIVATE PARTIES, CORPORATIONS, AND GOVERNMENTAL BODIES AS SHOWN ON THE ATTACHED SHEETS OF THIS PLAT.

1-A etc. indicates Exception from PLAT.

May 21, 1975

Sheet 1 of 7



V07E/11 Stratham Sales Co., Inc.

TOPEKA PLANNING DEPARTMENT	
620 SE Madison Street-3 rd Floor Topeka, Kansas 66607	Office: (785) 368-3728 Fax: (785) 368-2535

PLANNING OFFICE USE ONLY	
Date Submitted <u>8/2/07</u>	Date Advertised _____
Application No. <u>VOTE 11</u>	Date of Public Hearing _____
TO BE COMPLETED BY CITY CLERK'S OFFICE	
Filing Fee \$ <u>200.00</u>	Receipt No. <u>37541</u>

APPLICATION

City Vacation of Streets, Alleys and Easements

1. Applicant(s): Strathman Sales Co., Inc.
2. Applicant's Mailing Address: 2127 SE Lakewood Blvd

City Topeka
State: Kansas
Zip: 66605
3. Telephone: Area Code: 785 No.: 354-8537

4. Legal description of property requested to be vacated as prepared by the City of Topeka Department of Public Works:

Attached

5. Check type of vacation: Street ☐ Alley ☐ Easement ☒ Other ☐
6. Legal description of property owned by the applicant which adjoins the street, alley or easement to be vacated:

Lots 1 & 2
Block No. U

In Jefferson Square
Subdivision No. 2

Metes and Bounds Description, if unplatted:

7. Are there other owners of land who own property adjoining the subject street, alley or easement proposed to be vacated who, pursuant to K.S.A. 12-504, would be a property party to the petition to vacate? Yes ☐ No ☒

If yes, please list said owner's name(s) and mailing address.

8. Briefly, describe the proposed development of the subject property and your reasons for vacating the property:

The owner wishes to expand the existing building, into the area dedicated as utility easement

9. Will the area proposed for vacation preclude, restrict, hamper or lessen ingress-egress to other similarly abutting properties?

No

10. Do you concur with the retention of the subject area as an easement should the reviewing utility or public agency request such to cover existing or proposed utility lines?

The owner is prepared to grant a smaller easement, if needed.

11. Will any permanent structures be constructed within the area proposed for vacation?

Yes, An Extension of the existing building

12. Will the area proposed for vacation create any unique, adverse or undesirable traffic conditions?

No

13. How are adjoining properties used?

The adjoining property is public right-of-way, and the owner/applicants property - used as a warehouse/
distribution center.

14. In your opinion, would the proposed vacation injure or endanger any private rights?

No

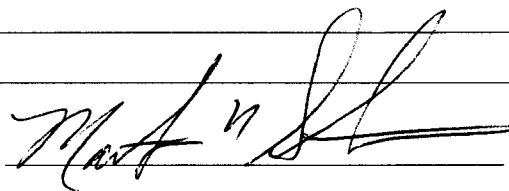
15. In your opinion, would the public suffer any loss or inconvenience should the petition to vacate be approved?

No, The owner proposes to relocate the existing sanitary sewer, which is in the easement.

16. In the event this proposed vacation is to vacate street or alley right-of-way, are you aware of the applicability of the district zoning on the subject property? Please briefly explain:

NA

Signature of Applicant(s)



(Please Attach Any Additional Information)

If the owner(s) of record is to be represented by legal counsel or an authorized agent, please complete the following so that communications pertaining to this application may be forwarded to the appropriate individual.

Name of Representative Bartlett & West Engineers, Inc. by Steve LaCasse, P.E.

Street Address 1200 SW Executive Drive

City Topeka State Kansas Zip Code 66615-3850

Telephone No. (785) 272-2252 ext 267 Fax No. (785) 273-8735

**PERMANENT PUBLIC
IMPROVEMENT
EASEMENT**

THIS INDENTURE, Made this _____ day of _____, 2007 by and between
Strathman Sales Co., inc.
hereinafter referred to as Landowner; and THE CITY OF TOPEKA, a municipal corporation,
hereinafter referred to as City.

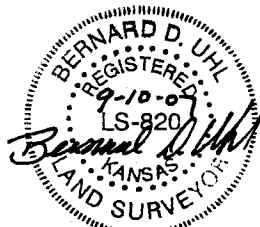
WITNESSETH, That Landowner in consideration of One Dollar and no/100 (\$1.00) and
other valuable considerations, the receipt of which is hereby acknowledged, does hereby grant,
bargain, sell and convey unto the City, an easement for a Sanitary Sewer, over and
through the following described real estate in the City of Topeka, County of Shawnee, and State
of Kansas, to-wit:

*(Signature, date and seal of a Registered Land Surveyor certifies that the following real property
legal description is an original description and has been prepared by or under the direct
supervision of subscribed Registered Land Surveyor. K.S.A. 74-7003)*

A TRACT OF LAND OF LOT 1, BLOCK U, JEFFERSON SQUARE SUBDIVISION NO. 2, CITY OF TOPEKA,
SHAWNEE COUNTY, KANSAS.

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1, BLOCK U; THENCE COINCIDENT WITH
THE SOUTHEASTERN LINE OF SAID LOT 1, BLOCK U, SAID LINE ALSO BEING THE WESTERLY
RIGHT OF WAY LINE OF LAKEWOOD BOULEVARD, SOUTH 36 DEGREES 07 MINUTES 00 SECONDS
WEST, 98.56 FEET; THENCE PERPENDICULAR WITH SAID SOUTHEASTERLY LINE, NORTH 53
DEGREES 53 MINUTES 00 SECONDS WEST, 25.00 FEET; THENCE, PARALLEL WITH SAID
SOUTHEASTERLY LINE, NORTH 36 DEGREES 07 MINUTES 00 SECONDS EAST, 73.68 FEET; THENCE
NORTH 50 DEGREES 44 MINUTES 33 SECONDS WEST, 58.00 FEET; THENCE NORTH 45 DEGREES 03
MINUTES 56 SECONDS EAST, 26.91 FEET, TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT
1, BLOCK U; SAID LINE ALSO BEING THE SOUTHERLY RIGHT OF WAY LINE OF QUINCY STREET;
THENCE COINCIDENT WITH SAID NORTHEASTERLY LINE ON A CURVE TO THE LEFT, HAVING A
RADIUS OF 320.00 FEET, CURVE LENGTH 55.97 FEET, CENTRAL ANGLE 10 DEGREES 01 MINUTES 15
SECONDS; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 53 DEGREES 53
MINUTES 00 SECONDS EAST, 23.04 FEET; TO THE POINT OF BEGINNING.

THE ABOVE EASEMENT CONTAINS 3868 SQUARE FEET, MORE OR LESS



Together with the right of entering on said premises for the purpose of constructing,
reconstructing, inspecting, repairing and doing such things as are necessary to use and maintain
same forever.

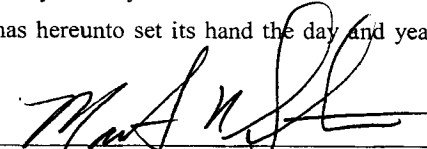
Should one or more of the Landowners be natural persons not joined by their respective
spouses, it is conclusively presumed that the land conveyed is not the residence, homestead, or
principal business or falls within the footprint of the principal business of such Landowners.
Should one or more of the Landowners be a legal entity other than a natural person, it shall be
conclusively presumed that the person signing on behalf of that entity has been duly and legally
authorized to so sign and there shall be no necessity for a seal or attestation.

This Permanent Public Improvement Easement shall run with the land and be binding
upon the grantees, lessees, successors, and assigns of the parties hereto, unless terminated by the
abandonment of the Public Improvement Easement by the City.

IN WITNESS WHEREOF, Landowner has hereunto set its hand the day and year first
above written.

Easement No. _____

For Project No. _____


Matthew H. Strathman
Pres. / G.M.

Please have the attached published in the Topeka Metro News in the Legal Advertising Section on September 21, 2007 and again on September 28, 2007.

IN THE MATTER OF THE PROPOSED VACATION OF:

A utility easement located at the southwest corner of SE Quincy Street and SE Lakewood Boulevard in Jefferson Square Subdivision No. 2, City of Topeka, Shawnee County, Kansas. **(V07E/11) (Council District No. 3)**

NOTICE OF PUBLIC HEARING

(Pursuant to K.S.A. 12-504 et seq.)

To Whom It May Concern:

Public notice is hereby given that a petition has been filed by Stratham Sales Co., Inc., owners of the concerned property, which includes a utility easement and praying that the easement located on said property, be vacated.

The petition will be presented to the Council of the City of Topeka for hearing on October 16, 2007, at 6:00 P.M. or as soon thereafter as the same may be heard in the City Council Chambers, Municipal Building, 2nd Floor, 8th and Monroe Streets, Topeka, Kansas, at which time and place all interested persons may appear and be heard, either for or against granting the prayer of said Petition.

**BY THE GOVERNING BODY,
CITY OF TOPEKA, KANSAS**

STREET/ALLEY/EASEMENT/SUBDIVISION VACATION

Case No.: V07E/11 Location: Southwest corner of SE Quincy
Street and SE Lakewood Boulevard

DEPARTMENTS:

- **Water Division:** X No Objection Objection
- **Engineering:** No Objection X Objection
Comments: There is at least a sanitary sewer in this easement. At the time of construction of the street in 1977, there was also a gas line and the south terminus of an overhead power line.
- **County Refuse:** X No Objection Objection
- **Fire Department:** X No Objection Objection
- **Police Department:** X No Objection Objection

UTILITY COMPANIES:

- **AT&T:** X No Objection Objection
Comments: The customer needs to realize if the cable to their building is in the way of construction, they would be responsible for charges to move it.
- **Westar:** X No Objection Objection
- **Kansas Gas Service:** X No Objection Objection
- **Cox Communications:** X No Objection Objection

Cindy Johnson, Planner I

September 14, 2007



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 20, 2007

 + Back  Print

DATE: October 9, 2007

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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